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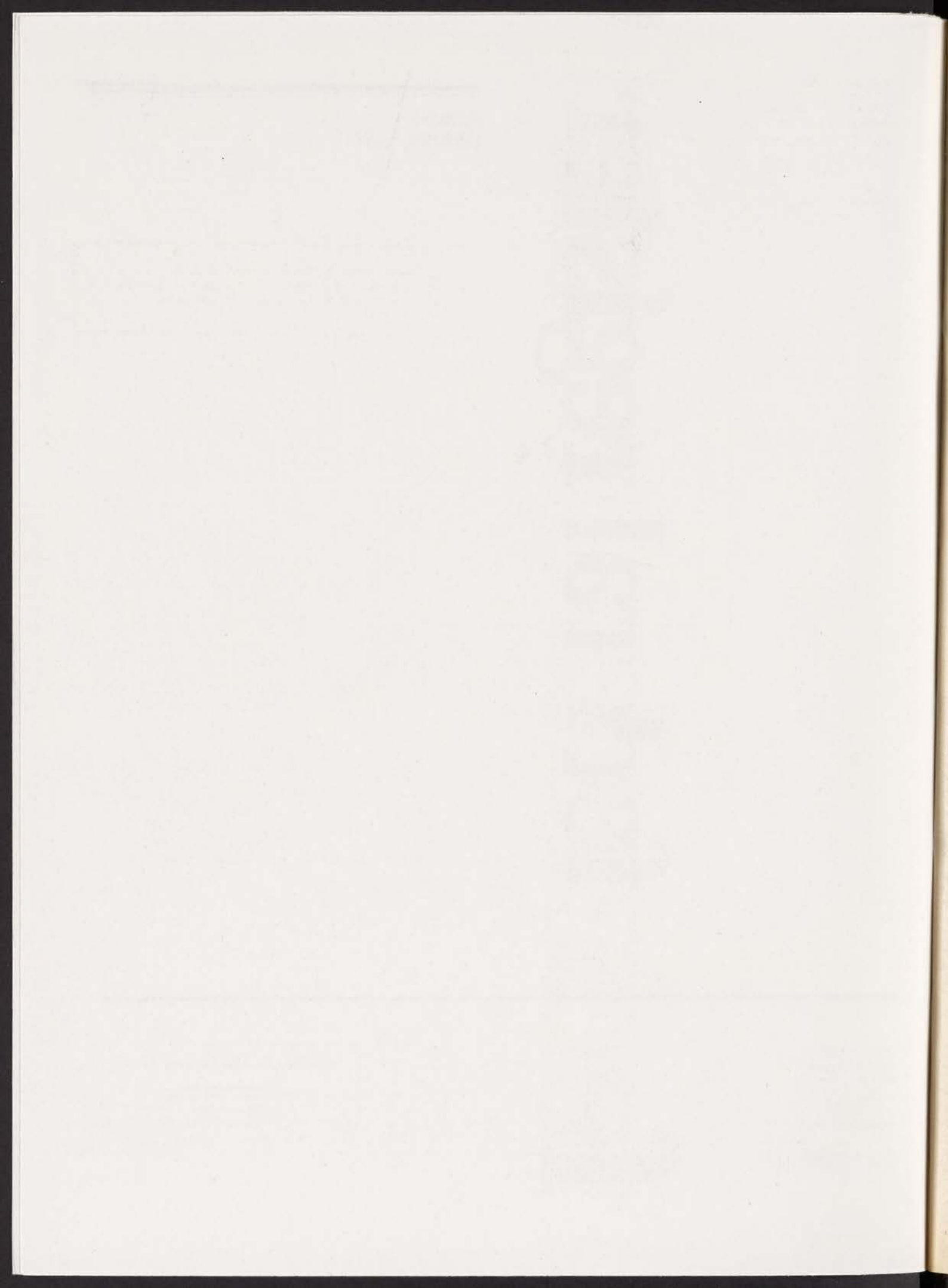
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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see
announcement on the inside cover of this issue.



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THE FEDERAL REGISTER

WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

- WHEN:** March 28, at 9:00 a.m.
- WHERE:** Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC
- RESERVATIONS:** 202-523-5240

Contents

Federal Register

Vol. 56, No. 46

Friday, March 8, 1991

Agricultural Marketing Service

NOTICES

Meetings:

Tobacco Inspection Services National Advisory Committee, 9932

Tobacco inspection:

Growers' referendum, 9932

Agricultural Workers Commission

See Commission on Agricultural Workers

Agriculture Department

See Agricultural Marketing Service; Cooperative State Research Service; Federal Grain Inspection Service; Forest Service

Alcohol, Tobacco and Firearms Bureau

PROPOSED RULES

Alcoholic beverages:

Alcoholic Beverage Labeling Act of 1988; health warning statement; scientific information request, 10066

Blind and Other Severely Handicapped, Committee for Purchase From

See Committee for Purchase From the Blind and Other Severely Handicapped

Coast Guard

RULES

Anchorage regulations:

California, 9852

Regattas and marine parades:

American Cancer Society Great Duck Race, 9850

Augusta Invitational Rowing Regatta, 9850

Crawford Bay Crew Classic, 9851

PROPOSED RULES

Drawbridge operations:

Washington, 9916

Commerce Department

See also International Trade Administration; National Oceanic and Atmospheric Administration

NOTICES

Agency information collection activities under OMB review, 9936

Commission on Agricultural Workers

NOTICES

Meetings, 9940

Committee for Purchase From the Blind and Other Severely Handicapped

NOTICES

Procurement list; additions and deletions, 9940, 9941 (2 documents)

Committee for the Implementation of Textile Agreements

NOTICES

Cotton, wool, and man-made textiles: Brazil, 9940

Community Services Office

NOTICES

State median income estimates for four-person families (1992 FY), 9963

Cooperative State Research Service

NOTICES

Meetings:

Committee of Nine, 9932

Defense Department

RULES

Records:

Freedom of Information Act; implementation Defense Nuclear Agency, 9841

NOTICES

Meetings:

Defense Systems Management College Board of Visitors, 9941

Defense Nuclear Facilities Safety Board

PROPOSED RULES

Freedom of Information Act; implementation, 9902

Employment and Training Administration

NOTICES

Adjustment assistance:

Albert Nipon-Leslie Fay Corp. et al., 9979

Eastman Christensen, 9978

Harvey Industries, Inc., 9978

Rome Turney Radiator Co., 9980

Wonderknot Scoreboard, 9980

Federal-State unemployment compensation program:

Extended benefit periods—

Alaska, 9980

Rhode Island, 9981

Employment Standards Administration

NOTICES

Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 9981

Energy Department

See also Energy Research Office; Federal Energy Regulatory Commission; Southwestern Power Administration

RULES

Special nuclear material, Category I quantities; personnel security access program, 10068

PROPOSED RULES

Substance abuse testing procedures; personnel security access program, 10075

Energy Research Office

NOTICES

Grants and cooperative agreements; availability, etc.:

Experimental program to stimulate competitive research, 9945

Special research program—

Atmospheric radiation measurement program, 9945

Environmental Protection Agency**NOTICES**

Environmental statements; availability, etc.:

Agency statements—

Comment availability, 9947

Weekly receipts, 9947

Grants, State and local assistance:

Financial assistance programs—

Toxic release inventory data capabilities, 9948

Executive Office of the President

See Management and Budget Office

Family Support Administration

See Community Services Office

Federal Aviation Administration**RULES**

Airworthiness directives:

Boeing, 9835

Glasflugel, 9837

McDonnell Douglas, 9838

PROPOSED RULES

Airworthiness directives:

Boeing, 9907

Dornier Luftfahrt GmbH, 9909, 9910

(2 documents)

SAAB-Scania, 9911

Wytwornia Sprzetu Komunikacyjnego PZL-Mielec, 9913

VOR Federal airways, 9914

NOTICES

Organization, functions, and authority delegations:

Lancaster, CA, 10007

Federal Communications Commission**RULES**

Common carrier services:

Access charges—

Local exchange carriers, 9897

Common carrier services; and radio services, special:

Channel bandwidth; 10550-10680 MHz band rechanneling, 9897

Radio services, special:

Maritime services—

Global Maritime Distress and Safety System;

international distress communications change from manual ship-to-ship to automated ship-to-shore system, 9881

Private operational-fixed microwave service—

Video entertainment material distribution, 9900

Radio stations; table of assignments:

Arizona, 9898

Arkansas, 9898

Idaho, 9899

New Jersey et al., 9899

PROPOSED RULES

Radio stations; table of assignments:

Illinois, 9924

Television broadcasting:

Television broadcast signals delivered by satellite to home satellite earth, station receivers; syndicated exclusivity requirements, 9924

NOTICES

Agency information collection activities under OMB review, 9950

(2 documents)

Meetings:

Advanced Television Service Advisory Committee, 9950

Radio services, special:

Amateur services—

Transceivers capable of receiving law enforcement and other signals; declaratory ruling request, 9951

Applications, hearings, determinations, etc.:

Carey, Julie J., et al., 9953

Federal Energy Regulatory Commission**NOTICES**

Natural Gas Policy Act:

Natural gas data collection system—

Revised print software, user/operations manual, and record formats; availability, 9942

Applications, hearings, determinations, etc.:

CNG Transmission Corp., 9944

Colorado Interstate Gas Co., 9944

Northern Border Pipeline Co., 9944

Federal Grain Inspection Service**NOTICES**

Agency designation actions:

Colorado et al., 9933

Illinois, 9934

Illinois et al., 9934

Iowa, 9934

Federal Highway Administration**PROPOSED RULES**

Motor carrier safety standards:

Biometric identification system for commercial operations; minimum uniform standards, 9925

Federal Housing Finance Board**NOTICES**

Conventional 1-family nonfarm mortgage loans; index rates for adjustable-rate mortgages, 9954

Federal Maritime Commission**NOTICES**

Investigations, hearings, petitions, etc.:

Passenger vessel financial responsibility requirements, 9955

Federal Register Administrative Committee

See Federal Register Office

Federal Register Office**NOTICES**

Guide to Record Retention Requirements in CFR; supplement, 10012

Federal Reserve System**NOTICES**

Applications, hearings, determinations, etc.:

Cleo L. Craig Trust et al., 9955

First National Bancorp, Inc., 9955

Federal Retirement Thrift Investment Board**NOTICES**

Meetings; Sunshine Act, 10010

Fish and Wildlife Service**NOTICES**

Endangered and threatened species permit applications.

9974

(2 documents)

Food and Drug Administration**RULES**

Animal drugs, feeds, and related products:

Fenbendazole, 9841

Sponsor name and address changes—

Orion Corp., FARMOS, Research and Development,
Pharmaceuticals, 9840

Pacific Molasses Co., 9840

PROPOSED RULES

Human drugs:

Dental and oral health care products (OTC) for
antiplaque use; safety and efficacy review, 9915

NOTICES

Human drugs:

New drug applications—

Rorer Pharmaceutical Corp. et al.; approval withdrawn,
9956

Superpharm Corp.; proposal to withdraw approval, 9957

Medical devices:

Class III devices without premarket notification (510(k))
or approved premarket approval application (PMA);
compliance policy guide availability, 9960

Forest Service**NOTICES**

Environmental statements; availability, etc.:

Fremont National Forest, OR, 9935

Lewis and Clark National Forest, MT, 9935

Lewis and Clark National Forest, MT; five year noxious
weed control program (1986-1990), 9935

General Services Administration**RULES**

Federal travel:

Travel, subsistence and related expenses; acceptance
from non-Federal sources, 9878

Nondiscrimination on basis of handicap in federally
conducted programs or activities, 9862

Health and Human Services Department

See also Community Services Office; Food and Drug
Administration; Health Resources and Services
Administration; Public Health Service

NOTICES

Agency information collection activities under OMB review,
9956

Health Resources and Services Administration

See also Public Health Service

NOTICES

National vaccine injury compensation program:
Petitions received, 9960

Housing and Urban Development Department**NOTICES**

Grants and cooperative agreements; availability, etc.:

Facilities to assist homeless—

Excess and surplus Federal property, 9965

Interior Department

See Fish and Wildlife Service; Land Management Bureau;
National Park Service; Surface Mining Reclamation and
Enforcement Office

International Trade Administration**NOTICES**

Antidumping:

Fresh cut flowers from—
Colombia, 9937

Antidumping and countervailing duties:

Administrative review requests, 9936

Meetings:

Automotive Parts Advisory Committee, 9939

International Trade Commission**NOTICES**

Import investigations:

Red tart cherries; economic and competitive factors
affecting U.S. industry, 9977

Interstate Commerce Commission**NOTICES**

Motor carriers:

Compensated intercorporate hauling operations, 9977

Rail carriers:

State intrastate rail rate authority—
Minnesota, 9977

Justice Department**NOTICES**

Agency information collection activities under OMB review,
9977

Pollution control; consent judgments:

Corinne, UT, et al., 9978

Labor Department

See Employment and Training Administration; Employment
Standards Administration

Land Management Bureau**NOTICES**

Environmental statements; availability, etc.:

Glenwood Springs Resource Area et al., CO, 9971

Sleeping Giant and Sheep Creek wilderness study areas,
MT, 9971

Meetings:

Prineville District Grazing Advisory Board, 9972

Spokane District Advisory Council, 9972

Opening of public lands:

Oregon, 9972

Realty actions; sales, leases, etc.:

Oregon, 9973

Withdrawal and reservation of lands:

Oregon, 9973

Management and Budget Office**NOTICES**

Budget rescissions and deferrals, 10082

National Aeronautics and Space Administration**NOTICES**

Patent licenses, exclusive:

Green Technologies, Inc., 9986

Patent licenses, revocation:

Cardinal Control Systems, Inc., et al., 9982

National Archives and Records Administration

See Federal Register Office

National Highway Traffic Safety Administration**PROPOSED RULES**

Motor vehicle safety standards:

Rearview mirror systems; reflectance, 9928

NOTICES

Motor vehicle safety standards; exemption petitions, etc.:

General Motors Corp., 10007

National Labor Relations Board**NOTICES**

Senior Executive Service:

Performance Review Board; membership, 9986

National Oceanic and Atmospheric Administration**PROPOSED RULES**

Fishery conservation and management:

Gulf of Mexico reef fish, 9930

National Park Service**PROPOSED RULES**

Minerals management:

Alaska Mineral resource assessment program, 9917

National Science Foundation**NOTICES**

Meetings:

Cultural Anthropology Advisory Panel, 9987

Mathematical Sciences Special Emphasis Panel, 9987

Research Initiation and Improvement Special Emphasis Panel, 9987

Nuclear Regulatory Commission**NOTICES***Applications, hearings, determinations, etc.:*

Barnett Industrial X-Ray, 9987

Cintichem, Inc., 9987

Office of Management and Budget*See* Management and Budget Office**Peace Corps****NOTICES**

Agency information collection activities under OMB review, 9988

Public Health Service*See also* Food and Drug Administration; Health Resources and Services Administration**NOTICES**

Agency information collection activities under OMB review, 9964

Securities and Exchange Commission**NOTICES**

Self-regulatory organizations:

Clearing agency registration applications—

Participants Trust Co., 10000

Self-regulatory organizations; proposed rule changes:

American Stock Exchange, Inc., 9988

Boston Stock Exchange, Inc., 9990

National Association of Securities Dealers, Inc., 9991, 9992

(2 documents)

New York Stock Exchange, Inc., 9993

Options Clearing Corp., 9995

Philadelphia Stock Exchange, Inc., 10005

Applications, hearings, determinations, etc.:

Public utility holding company filings, 10001

Small Business Administration**NOTICES**

Meetings; regional advisory councils:

Tennessee, 10007

Southeastern Power Administration**NOTICES**

Power rates:

Georgia-Alabama-South Carolina System of Projects, 9946

Surface Mining Reclamation and Enforcement Office**RULES**

Initial and permanent regulatory programs:

Surface coal mining and reclamation operations—

Civil penalties, 10060

NOTICES

Valid existing rights determinations:

Rosebud Mining Co.; Allegheny River, PA, 9974

Textile Agreements Implementation Committee*See* Committee for the Implementation of Textile Agreements**Transportation Department***See* Coast Guard; Federal Aviation Administration; Federal Highway Administration; National Highway Traffic Safety Administration**Treasury Department***See* Alcohol, Tobacco and Firearms Bureau**United States Information Agency****NOTICES**

Grants and cooperative agreements; availability, etc.:

Private non-profit organizations in support of international educational and cultural activities, 10007

Veterans Affairs Department**RULES**

Loan guaranty:

Guaranteed loans processing; credit underwriting standards and procedures; specially adapted housing, 9853

Separate Parts In This Issue**Part II**

National Archives and Records Administration, Federal Register Office, 10011

Part III

Department of the Interior, Surface Mining Reclamation and Enforcement Office, 10060

Part IV

Department of Treasury, Alcohol, Tobacco and Firearms Bureau, 10066

Part V

Department of Energy 10068

Part VI

Management and Budget Office, 10082

Reader Aids

Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

10 CFR

710..... 10068

Proposed Rules:

710..... 10075

1703..... 9902

14 CFR

39 (3 documents)..... 9835-
9838

Proposed Rules:

39 (5 documents)..... 9907-
9913

71..... 9914

21 CFR

510 (2 documents)..... 9840

520..... 9840

558..... 9841

Proposed Rules:

356..... 9915

27 CFR**Proposed Rules:**

16..... 10066

30 CFR

723..... 10060

845..... 10060

32 CFR

291..... 9841

33 CFR

100 (3 documents)..... 9850,
9851

110..... 9852

Proposed Rules:

117..... 9916

36 CFR**Proposed Rules:**

9..... 9917

38 CFR

36..... 9853

41 CFR

105-8..... 9862

301-1..... 9878

Ch. 304..... 9878

47 CFR

2..... 9881

21..... 9897

69..... 9897

73 (4 documents)..... 9898,
9899

80..... 9881

94 (2 documents)..... 9897,
9900

Proposed Rules:

73..... 9924

76..... 9924

49 CFR**Proposed Rules:**

383..... 9925

571..... 9928

50 CFR**Proposed Rules:**

641..... 9930

Rules and Regulations

Federal Register

Vol. 56, No. 46

Friday, March 8, 1991

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-NM-27-AD; Amdt. 39-6928]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which currently requires repetitive penetrant inspections and proof pressure tests of the leading edge pneumatic ducts and provides for weld stress relieving as optional terminating action. This action revises the provisions of the existing rule by requiring replacement of titanium T-ducts with Inconel T-ducts and stress relieving of all other pneumatic ducts, as terminating action. This action also specifies a new proof pressure test procedure for flangeless ducts. This amendment is prompted, in part, by the discovery that the existing AD incorrectly states that the stress relieving procedure constitutes terminating action for titanium T-ducts. Additionally, the FAA has determined that, in the interest of continuing airworthiness, the terminating action must be mandatory and that a proof pressure test must be required. Cracked or ruptured ducts, if not corrected, could lead to damage to wing leading edge panels and associated problems.

EFFECTIVE DATE: April 15, 1991.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest

Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy J. Dulin, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2675. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4050.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 88-17-07, Amendment 39-5986 (53 FR 28856, August 1, 1988), applicable to certain Boeing Model 747 series airplanes, to require replacement of titanium T-ducts with Inconel T-ducts, stress relieving of all other leading edge pneumatic ducts, and proof pressure test of flangeless ducts in accordance with new procedures was published in the Federal Register on October 11, 1990 (55 FR 41343).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer requested that the "NOTE" in proposed paragraph A. be revised to delete the stress relieving requirement for titanium T-ducts, and require replacement of the titanium T-ducts with Inconel T-ducts as terminating action. The manufacturer commented that the note implies that the weld stress relieving procedure may be accomplished in conjunction with a penetrant inspection as terminating action for the requirement to replace titanium T-ducts with Inconel T-ducts. The FAA concurs that the note should be revised somewhat to clarify its intent. The note in paragraph A. of the final rule has been revised to clarify its applicability.

The manufacturer also requested that the proposed paragraph B.3. be revised to require additional proof pressure testing only on bent flangeless ducts. The manufacturer commented that the proposed paragraph B.3. implies that, even if the stress relieving procedure had already been accomplished in accordance with AD 88-17-07, proof pressure testing is still required for all flangeless ducts (straight and bent flangeless ducts included) in accordance with Boeing Service Bulletin 747-

36A2074, Revision 4, dated September 13, 1990. The commenter noted that proof pressure test procedures for bent flangeless ducts did not exist prior to Revision 4 of the service bulletin. The commenter further stated that although the proof pressure test procedures for straight flangeless ducts have been improved by Revision 4, previous proof pressure test procedures should be considered adequate to provide an acceptable level of safety. The FAA concurs. Paragraph B.3. of the final rule has been revised accordingly.

Two commenters requested that the FAA exempt straight flangeless ducts from the modified proof pressure test described in Revision 4 to Boeing Service Bulletin 747-36A2074. One commenter noted that a modified proof pressure test is required for straight flangeless ducts to ensure longitudinal strength. However, the commenter noted that the longitudinal strength test is not necessary for this type of duct since longitudinal stresses would be minimal under usual flight conditions. The other commenter did not provide a reason to exempt straight flangeless ducts but recommended that the lead-in modification, defined in the service bulletin and required for the modified proof pressure test, be introduced as a repair only for flangeless duct ends which were deformed by heat treatment. The FAA agrees that the proof pressure test defined by Revision 3 to the service bulletin is adequate for straight flangeless ducts. Therefore, paragraph B.3. of the final rule has been revised to exempt straight flangeless ducts which have been stress relieved in accordance with AD 88-17-07 from the additional proof pressure test requirement, as stated above. However, any future proof pressure testing of flangeless ducts should utilize the improved procedures defined in Revision 4 to the service bulletin and is required by the AD. The FAA does not concur that use of the lead-in modification described in the service bulletin to repair flangeless duct ends, which were deformed by heat treatment would independently serve as an adequate repair because this modification requires an additional proof pressure test to ensure the integrity of the new weld introduced.

One commenter requested that operators be allowed to use the radiographic and fluorescent inspections for bent flangeless ducts to detect

cracks until tooling is available to conduct the proof pressure test described in Boeing Service Bulletin 747-36A2074, Revision 4. The commenter stated that both the proof pressure test and the radiographic inspection methods would detect the presence of cracks. Another commenter requested the use of radiographic and fluorescent inspections of the bent flangeless duct as an alternate means of compliance for the initial inspection. That commenter stated that radiographic and fluorescent inspections in lieu of the proof pressure test of the bent flangeless ducts provides an effective alternative for the initial inspection. The FAA does not concur. The FAA has determined that the proof pressure test is a much more reliable method of determining duct integrity. Also, the FAA considered test tooling availability when developing the compliance times for this AD action.

One commenter recommended that ducts inspected in accordance with Revision 3 to Boeing Service Bulletin 747-36A2074 be exempt from any additional work because the radiographic/fluorescent and proof pressure tests would detect the presence of hidden/starting cracks. The FAA does not concur. The FAA has determined that inspection alone is not adequate. Therefore, the FAA is issuing this AD to require that titanium T-ducts be replaced with Inconel T-ducts and all other ducts be stress relieved.

One commenter requested that the AD be revised to require the initial inspection within a total of 7,000 flight cycles or within 1,850 flight cycles from the effective date, whichever occurs later. The commenter noted that the proposal reduced the compliance time for the initial inspection to within 5,850 total flight cycles or within the next 1,850 flight cycles from the effective date, whichever occurs later; AD 88-17-07 requires the initial inspection within 7,000 total flight cycles or 3,000 flight cycles from the effective date, whichever occurs later. The commenter noted that a reduction from 3,000 cycles to 1,850 cycles is reasonable due to the effective date; however, there is no clear reason why the total cycle is reduced from 7,000 cycles to 5,850 cycles. The FAA does not concur. The FAA stated in the Notice of Proposed Rulemaking issued on March 16, 1990 (55 FR 11028, March 26, 1990), that the compliance time for the initial inspection must be reduced for both total cycles and cycles after the effective date, based on failure history which showed that failures can occur in the range of 700 to 21,000 flight cycles.

One commenter requested that the AD applicability be revised to agree with the Boeing Service Bulletin 747-36A2074, Revision 4. The commenter noted that the service bulletin applicability for all Model 747 series airplanes, from line positions 2 through 707 (except Model 747-400 series airplanes), is not consistent with the AD applicability. The FAA concurs. The terminating action provisions of this AD have been incorporated, in production, on airplane line positions 708 and subsequent. The final rule has been revised by deleting airplane line numbers 708 and subsequent from the applicability.

The Air Transport Association (ATA) of America requested that the FAA reconsider the comments submitted in response to the NPRM issued on March 16, 1990. The FAA has reconsidered the comments submitted by the ATA and has determined that the original disposition of those comments, iterated in the Supplemental NPRM that was published in the *Federal Register* on October 11, 1990 (55 FR 41343), is still valid.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of this AD.

There are approximately 640 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 172 airplanes of U.S. registry will be affected by this AD, that it will take approximately 280 manhours per airplane to accomplish the required initial inspection and test, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$1,926,400 for the initial required action.

Additionally, terminating action for T-ducts will require parts replacement at an estimated cost of \$15,000 per airplane, for a total replacement part cost of \$2,580,000 for the affected fleet.

Based on these figures explained above, the total cost impact of this AD on U.S. operators is estimated to be \$4,506,400.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is

determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13—[AMENDED]

2. Section 39.13 is amended by superseding AD 88-17-07, Amendment 39-5986 (53 FR 28856, August 1, 1988), with the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line positions 2 through 707, except Model 747-400 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent damage to wing panels and/or electrical wiring as a result of failure of wing leading edge ducts, accomplish the following:

A. Prior to the accumulation of 5,850 flight cycles, or within the next 1,850 flight cycles after the effective date of this AD, whichever occurs later, conduct a penetrant inspection and proof pressure test as follows:

1. For titanium T-ducts and flanged ducts: Conduct the inspection and test in accordance with the Accomplishment Instructions, Items A. through F., J., and K. of Boeing Alert Service Bulletin 747-36A2074, Revision 3, dated May 11, 1989, or Revision 4, dated September 13, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace the duct in accordance with the service bulletin.

2. For flangeless ducts: Conduct the inspection and test in accordance with the Accomplishment Instructions, Items A.

through E., J., and K. of Boeing Alert Service Bulletin 747-36A2074, Revision 4, dated September 13, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace the duct in accordance with the service bulletin.

Note: For both flanged and flangeless ducts specified in paragraphs A.1. and A.2. of this AD (excluding T-ducts): The duct weld stress relieving procedure specified in Items G., H., and I. of the referenced service bulletins (and required by paragraphs B.2. and B.3. of this AD) may be accomplished in conjunction with the penetrant inspection and proof pressure test required by this paragraph, and constitutes terminating action for the requirements of paragraphs B.2. and B.3. of this AD.

B. Prior to the accumulation of 3,000 flight cycles after accomplishment of the initial inspection required by paragraph A. of this AD, accomplish the following:

1. For titanium T-ducts: Replace titanium T-ducts with Inconel T-ducts in accordance with Boeing Service Bulletin 747-36-2059, dated June 3, 1983. Accomplishment of this replacement constitutes terminating action for the requirements of this AD.

2. For flanged ducts, except T-ducts: Conduct a penetrant inspection, proof pressure test, and duct weld stress relieving in accordance with the Accomplishment Instructions, Items A. through K., of Boeing Alert Service Bulletin 747-36A2074, Revision 3, dated May 11, 1989, or Revision 4, dated September 13, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace the duct in accordance with the service bulletin. If the duct weld stress relieving has already been accomplished in accordance with AD 88-17-07 prior to the effective date of this AD, it constitutes terminating action for the requirements of this paragraph for flanged ducts.

3. For flangeless ducts: Conduct a penetrant inspection, proof pressure test, and duct weld stress relieving in accordance with the Accomplishment Instructions, Items A. through K., of Boeing Alert Service Bulletin 747-36A2074, Revision 4, dated September 13, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace the duct in accordance with the service bulletin. If the penetrant inspection, proof pressure test, and duct weld stress relieving have already been accomplished in accordance with AD 88-17-07 prior to the effective date of this AD, the following apply:

a. For straight flangeless ducts (L3, R3, L4, R4, L5, and R5 defined in the service bulletin): The above constitutes terminating actions for the requirements of this AD.

b. For bent flangeless ducts (L2, R2, L7, and R7 defined in the service bulletin): Conduct only a proof pressure test in accordance with Boeing Alert Service Bulletin 747-36A2074, Revision 4, dated September 13, 1990.

c. For ducts other than T-ducts: Replacement of all leading edge pneumatic ducts by kits in accordance with Boeing Alert Service Bulletin 747-36A2074, Revision 3, dated May 11, 1989, or Revision 4, dated September 13, 1990; or in accordance with Boeing Service Bulletin 747-36-2092, dated June 28, 1990; constitutes terminating action for the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which

provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

This amendment supersedes Amendment 39-5986, AD 88-17-07.

This amendment becomes effective April 15, 1991.

Issued in Renton, Washington, on February 27, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5516 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-CE-37-AD; Amdt. 39-6920]

Airworthiness Directives; Glasflugel Models H301 Libelle, H301B Libelle, Standard Libelle, Standard Libelle 201, Standard Libelle 201B, Standard Libelle 203, Kestrel 604, and BS-1 Gliders.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Glasflugel Libelle, Kestrel, and BS-1 series gliders. This action (1) supersedes AD 71-16-06 and AD 88-07-05; (2) requires replacement of all hemp core rudder cables; (3) requires repetitive inspections of the cables for fraying, wear, corrosion, twisting or other damage, and replacement if found damaged; and (4) eliminates the mandatory replacement of these cables every 500 hours time-in-service as was required by the superseded ADs. Operational experience indicates that the replacement of the cables every 500 hours TIS is not justified and should not be mandatory. The actions specified in this AD are intended to prevent failure in the rudder control system.

EFFECTIVE DATE: April 8, 1991.

ADDRESSES: Hansjorg Streifeneder Technical Note (TN) Nos. 201-26, 301-33, 401-20, and 501-4, all dated March 15, 1987, that are discussed in this AD may be obtained from Hansjorg Streifeneder, Glasflaser Flugzeug Service GmbH, Hofener Weg, D-7431 Grabenstetten, Federal Republic of Germany. This information also may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Mittag, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone (322)—513.38.30, Extension 2710; or Mr. Herman Belderok, Project Officer, FAA, 601 E. 12th Street, Kansas City, Missouri 64106, Telephone (816) 426-6932; Facsimile (816) 426-2189.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would be applicable to Glasflugel Models H301 Libelle, H301B Libelle, Standard Libelle, Standard Libelle 201, Standard Libelle 201B, Standard Libelle 203, Kestrel 604, and BS-1 gliders was published in the Federal Register on October 16, 1990 (55 FR 41862). The proposed AD would (1) supersede AD 71-16-06 and AD 88-07-05; (2) require the replacement of certain hemp core rudder cables; (3) require repetitive inspections of the cables for fraying, wear, corrosion, twisting or other damage, and replacement if found damaged; and (4) eliminate the mandatory replacement of these cables every 500 hours time-in-service as was required by the superseded ADs.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No comments were received on the proposed AD or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. These minor corrections will not change the meaning of the AD or add any additional burden upon the public than was already proposed.

It is estimated that 179 gliders of U.S. registry are affected by this AD. This AD eliminates mandatory repetitive replacements of these cables on the affected gliders. Since this AD presents a decrease in the cost of compliance than was previously required, there will not be a financial impact on any small entities operating these gliders.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the

national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by removing AD 88-07-05, Amendment 39-5865 (53 FR 9434, March 23, 1988) and AD 71-16-06, Amendment 39-1253, and adding the following new AD:

Glasflugel: Amendment 39-6920; Docket No. 90-CE-37-AD.

Applicability: Models H301 Libelle, H301B Libelle, Standard Libelle, Standard Libelle 201, Standard Libelle 201B, Standard Libelle 203, Kestrel 604, and BS-1 Gliders (all serial numbers), certificated in any category.

Compliance: Required as indicated after the effective date of this AD, unless already accomplished.

To prevent failures in the rudder control system, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, replace all DIN specification 055, 6 by 7 inch rudder cables with a diameter of 2.55 mm (.098 in.) having a hemp core, with a 7 by 7, 3/32 inch cable, manufactured in accordance with MIL-W-83420D or MIL-W-1511A, with cable connections constructed in accordance with

Actions 2 of Hansjorg Streifeneder Technical Note Nos. 201-28, 301-33, 401-20, 501-4, all dated March 15, 1987.

Note: The replacement cables may have been installed pursuant to superseded AD 71-16-06, Amendment 39-1253, or superseded AD 88-07-05, Amendment 39-5865.

(b) Within the next 100 hours TIS after the replacement of the cables required in paragraph (a) of this AD or within the next 100 hours after the effective date of this AD, whichever is applicable, and thereafter at intervals not to exceed 100 hours TIS, visually inspect the rudder cables for wear, fraying, corrosion, twisting or other damage. If damaged cables are found, prior to further flight, replace the damaged cables with cables and connections as specified in paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa, and Middle East Office, FAA, c/o American Embassy, 15 Rue de la Loi B-1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Hansjorg Streifeneder, Glasflaser Flugzeug Service GmbH, Hofener Weg, D-7431 Grabenstetten, Federal Republic of Germany; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This AD supersedes AD 71-16-06, Amendment 39-1253, and AD 88-07-05, Amendment 39-5865.

This amendment becomes effective on April 8, 1991.

Issued in Kansas City, Missouri, on February 20, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5515 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 90-NM-156-AD; Amdt. 39-6929]

Airworthiness Directives; McDonnell Douglas Model DC-9 Series, Model DC-9-80 Series Airplanes, and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Model

DC-9 series, DC-9-80 series, and MD-88 airplanes equipped with certain BFGoodrich evacuation slides, which requires installation of a new girt bar flap and firing line, and modification of the valise. This amendment is prompted by reports of incidents of in-flight inflations. This condition, if not corrected, could obstruct and hinder the emergency evacuation of the airplane, and could result in injuries to passengers and crew.

EFFECTIVE DATE: April 15, 1991.

ADDRESSES: The applicable service information may be obtained from The BFGoodrich Company, Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT:

Mr. Andrew Gfrerer, Aerospace Engineer, Los Angeles Aircraft Certification Office, Systems and Equipment Branch, ANM-131L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5338.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to McDonnell Douglas Model DC-9 series, Model DC-9-80 series, and Model MD-88 airplanes, equipped with BFGoodrich, Aircraft Evacuation Systems (formerly Sargent Industries, Pico Division; formerly Pico, Inc.) Evacuation Slides, P/N 11331-(), which requires installation of a new girt bar flap and firing line, and modification of the valise, was published in the Federal Register on September 14, 1990 (55 FR 37885).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Several commenters suggested that the proposed compliance time be changed to coincide with the next scheduled overhaul/maintenance check in order to minimize the impact of the proposed actions, and to allow BFGoodrich ample time to produce a sufficient quantity of the required materials. The FAA does not concur. The FAA has determined that a compliance time set at the next regularly scheduled maintenance check could

occur at 24, 36, or as much as 48 months from the effective date of the AD, depending on the operator. Additionally, the compliance time, as proposed in this AD, represents the maximum time allowable for the affected airplanes to continue to operate prior to the required modification without compromising safety. Further, since the FAA has verified that parts availability will not be a problem and that the manufacturer will be able to produce a sufficient quantity of the necessary materials, the compliance time of 18 months, as proposed, is appropriate.

One commenter has informed the FAA that the firing line identified in BFGoodrich Service Bulletin 11331-25-226, Revision 1, dated July 16, 1990, will not work in the General Pneumatics valves, which were installed on the early P/N 11331 slides. After further review of this issue, the FAA concurs. The firing line specified in BFGoodrich Service Bulletin 11331-25-226, Revision 1, can prevent the slide from inflating. Since issuance of the Notice, the FAA has reviewed and approved BFGoodrich Service Bulletin 11331-25-226, Revision 2, dated January 4, 1991, which corrects this information. The FAA has revised the final rule to reference this revision of the service bulletin as the appropriate information source.

Two commenters stated that the labor requirements specified in the economic analysis paragraph in the preamble to the NPRM were understated. These commenters figured that the required actions would take 8 manhours per airplane, rather than the 2.65 manhours per manhour that was cited in the NPRM. The FAA partially concurs with the commenter. Further review of this issue indicates that the number of required manhours should be revised somewhat. Modification of evacuation slides with detachable girts requires no additional manhours if accomplished during normal slide maintenance; approximately 2.25 manhours are required if it is accomplished as a separate action. Modification of units with fixed girts requires an estimated 4.0 manhours if accomplished during normal slide maintenance; approximately 6.25 manhours are required if it is accomplished as a separate action. The economic analysis paragraph, below, has been revised to specify this difference in labor requirements.

Another commenter surmised that, since there has only been one incident and the exact cause of the incident has not been determined, the AD should be issued against the affected galleys to correct a design problem in the galleys.

The FAA does not concur. An FAA investigation revealed six incidents in which BFGoodrich P/N 11331-() evacuation slides inflated during flight. Further, an analysis revealed that the firing line on the service door slide can slip out from under the girt, and subsequently, a galley cart in the vicinity can inadvertently snag the firing line and inflate the slide. The FAA has investigated the possibility of issuing an AD against the affected galleys; however, because numerous galley designs exist, some of which have not been involved in similar incidents, the specific galley cannot be identified at this time. Consequently, the FAA has determined that the most efficient way to correct the addressed unsafe condition is to require modification of the slides.

Another commenter stated that only the service door evacuation slide was involved in the incidents; therefore, the AD should not affect the main entry door slide. The FAA concurs in part. Although only the service door evacuation slide was involved in the cited incidents, both the service door and the main entry door use the same slide. The FAA has determined that since both doors use the same slide, and the slides can be interchanged, the service door and main entry door slides must be modified.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the changes described above. These changes will neither significantly increase the economic burden on any operator nor increase the scope of the rule.

There are approximately 3,150 slides of the affected design installed on McDonnell Douglas Model DC-9 series, Model DC-9-80 series, and Model MD-88 airplanes in the worldwide fleet. It is estimated that 1,600 slides installed on airplanes of U.S. registry will be affected by this AD. Modification of evacuation slides with detachable girts will require approximately 2.25 manhours per airplane to accomplish. Modification of units with fixed girts will require approximately 6.25 manhours per airplane to accomplish. The average labor cost is \$40 per manhour. The cost of parts to accomplish the modification is estimated to be \$350 per slide. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be either \$440 or \$600 per airplane, depending on the configuration of the slide.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Applies to Model DC-9 series airplanes, Model DC-9-80 series airplanes, and Model MD-88 airplanes; equipped with BFGoodrich, Aircraft Evacuation Systems (formerly Sargent Industries, Pico Division; formerly Pico, Inc.) evacuation slides, P/N 11331-(); certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent obstruction or hindrance with the emergency evacuation of the airplane and possible injuries to the passengers and the crew, accomplish the following:

A. Within 18 months after the effective date of this AD, accomplish the modification of the evacuation slide in accordance with section 2, Accomplishment Instructions, of BFGoodrich Service Bulletin 11331-25-226, Revision 2, dated January 4, 1991.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Los Angeles ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Los Angeles ACO.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to The BFGoodrich Company, Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment becomes effective April 15, 1991.

Issued in Renton, Washington, on February 27, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5517 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name and Address

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name and address for a new animal drug application (NADA) from Famos Group, Ltd., to Orion Corp. FARMOS, Research and Development, Pharmaceuticals.

EFFECTIVE DATE: March 8, 1991.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Famos Group, Ltd., P.O. Box 425, SF-20101

Turku 10, Finland, has merged with the Orion Corp. and has submitted a supplemental application for a change of sponsor name and address. The resulting company, and new sponsor of approved NADA 140-862, is Orion Corp. FARMOS, Research and Development, Pharmaceuticals, P.O. Box 425, SF-20101 Turku, Finland. The sponsor labeler code of Famos Group, Ltd., is being retained as the labeler code for the new company.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for "Famos Group, Ltd." and by alphabetically adding a new entry for "Orion Corp. FARMOS, Research and Development, Pharmaceuticals" and in the table in paragraph (c)(2) in the entry for "052483" by revising the sponsor name and address to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
Orion Corp. FARMOS, Research and Development, Pharmaceuticals, P.O. Box 425, SF-20101 Turku, Finland	052483

(2) * * *

Drug labeler code	Firm name and address
052483	Orion Corp. FARMOS, Research and Development, Pharmaceuticals, P.O. Box 425, SF-20101 Turku, Finland

Dated: March 1, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine [FR Doc. 91-5493 Filed 3-7-91; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) from V.M.S., Inc., to Pacific Molasses Co.

EFFECTIVE DATE: March 8, 1991.

FOR FURTHER INFORMATION CONTACT:

Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: V.M.S., Inc., P.O. Box 406, Montgomery, AL 36195-6001, has informed FDA that it has transferred ownership of, and all rights and interests in, NADA 136-214 (polyoxyethylene (23) lauryl ether blocks) to Pacific Molasses Co., 333 Market Street, Suite 1000, San Francisco, CA 94105. In addition, V.M.S., Inc., is no longer the sponsor of any approved NADA. Accordingly, the agency is amending the regulations in 21 CFR 510.600 (c)(1) and (c)(2) and 21 CFR 520.1846(b) to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 708 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "V.M.S., Inc.," and in the table in paragraph (c)(2) by removing the entry for "035624".

PART 520—ORAL DOSAGE FORM; NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512, of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.1846 [Amended]

2. Section 520.1846 *Polyoxyethylene (23) lauryl ether blocks* is amended in paragraph (b) by removing "035624" and inserting in its place "050112".

Dated: March 1, 1991.

Robert C. Livingston,
Director, Office of New Animal Drug
Evaluation, Center for Veterinary Medicine.
[FR Doc. 91-5495 Filed 3-7-91; 8:45 am]
BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Fenbendazole

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Hoechst-Roussel Agri-Vet Co. The supplemental NADA provides for the use of an 8 percent fenbendazole Type A medicated article for making Type C medicated swine feed for use as an anthelmintic.

EFFECTIVE DATE: March 8, 1991.

FOR FURTHER INFORMATION CONTACT: Henry E. Schmaus, Center for Veterinary Medicine (HFV-140), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2853.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202-206 North, P.O. Box 2500, Somerville, NJ 08876-1258, filed a supplement to NADA 131-675 which provides for use of the Safe-Guard® (fenbendazole) Type A

medicated article for making Type C medicated swine feed. The Type C feed is used for the removal of large roundworms, nodular worms, small stomach worms, whipworms, and kidney worms. The supplement provides for the use of an 8 percent Type A medicated article in addition to use of the currently approved 4 and 20 percent articles. The supplemental NADA is approved as of March 8, 1991 and 21 CFR 558.258 is amended by revising paragraph (a) to reflect the approval.

Approval of this supplement did not require additional effectiveness, target animal safety, or human food safety studies.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval does not qualify for marketing exclusivity because new clinical or field studies were not required for the approval.

Fenbendazole is a new animal drug used in a Type A medicated article to make a Type C medicated feed. Fenbendazole is a Category II drug which, as provided in 21 CFR 558.4(e), requires an approved Form FDA 1900 for making a Type C medicated feed, as in approved NADA 131-675 and in 21 CFR 558.258, as amended by this final rule.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support this approval may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(iii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

2. Section 558.258 is amended by revising paragraph (a) to read as follows:

§ 558.258 Fenbendazole.

(a) *Approvals.* Type A medicated articles: 4 percent (18.1 grams per pound), 8 percent (36.2 grams per pound), and 20 percent (90.7 grams per pound) fenbendazole to 012799 in § 510.600(c) of this chapter.

* * * * *
Dated: March 1, 1991.

Robert C. Livingston,
Director, Office of New Animal Drug
Evaluation, Center for Veterinary Medicine.
[FR Doc. 91-5497 Filed 3-7-91; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 291

[DNA 5400.7C]

Defense Nuclear Agency (DNA) Freedom of Information Act Program

AGENCY: Defense Nuclear Agency.

ACTION: Final rule.

SUMMARY: Defense Nuclear Agency operates its Freedom of Information Act Program in accordance with DoD Directive 5400.7 (32 CFR part 285) and DoD 5400.7-R (32 CFR part 286) which provides the policies and procedures for the Department of Defense (DoD) and the DoD Components. This rule implements the internal procedures for obtaining information from DNA under the provisions of the Freedom of Information Act 5 U.S.C. 552 and revises 32 CFR part 291.

EFFECTIVE DATE: December 13, 1990.

FOR FURTHER INFORMATION CONTACT: Nell M.S. Hayes, Public Affairs Office, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310-3398, telephone (703) 325-7095.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 291

Freedom of information.

Accordingly, 32 CFR part 291 is revised to read as follows:

PART 291—DEFENSE NUCLEAR AGENCY (DNA) FREEDOM OF INFORMATION ACT PROGRAM

Sec.	
291.1	Purpose.
291.2	Applicability.
291.3	Definitions.
291.4	Policy.
291.5	Responsibilities.
291.6	Procedures.
291.7	Administrative instruction.
291.8	Exemptions.
291.9	For official use only (FOUO).

Appendix A—Freedom of Information Act Request (DNA Form 524)

Authority: 5 U.S.C. 552.

Dated: March 1, 1991.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

§ 291.1 Purpose.

This part establishes policies and procedures for the DNA FOIA program.

§ 291.2 Applicability.

This part applies to Headquarters, Defense Nuclear Agency (HQ, DNA), Field Command, Defense Nuclear Agency (FCDNA), and the Armed Forces Radiobiology Research Institute (AFRRI).

§ 291.3 Definitions.

(a) *FOIA Request.* A written request for DNA records made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes the FOIA (5 U.S.C. 552), 32 CFR part 285, 286, or this part.

(b) *Agency Record.* (1) The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in DNA's possession and control at the time the FOIA request is made.

(2) The following are not included within the definition of the word *record*:

(i) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence.

(ii) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of a DNA organization. Normally, computer software, including source code, object

code, and listings of source and object codes, regardless of medium are not agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined in paragraph (b)(3) of this section.

(iii) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(iv) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(v) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(3) In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rare, and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(i) When the data is embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(ii) Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of a DNA office, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models on travel costs.

(iii) Refer to § 291.8(b) exemptions 2, 4 and 5 for guidance on release determinations of computer software.

(4) If unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply and they need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the Federal Register also require no processing under the FOIA. In such cases, PAO will direct the requester to the appropriate source, to obtain the record.

(d) *Initial Denial Authority (IDA).* The Deputy Director (DDIR), DNA, has the authority to withhold records requested under the FOIA for one or more of the

nine categories (set forth § 291.8) of records exempt from mandatory disclosure.

(e) *Appellate Authority.* The Director, DNA.

(f) *Administrative Appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component (Director, DNA) to reverse an IDA decision to withhold all or part of a requested record or to deny a request for a waiver or reduction of fees.

(g) *Public Interest.* Public interest is official information that sheds light on an agency's performance of its statutory duties because it falls within the statutory purpose of the FOIA in informing citizens about what their government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files that reveals little or nothing about an agency's or official's own conduct.

(h) *Electronic Data.* Electronic data are those records and information which are created, stored, and retrievable by electronic means. This does not include computer software, which is the tool by which to create, store, or retrieve electronic data. Refer to paragraphs (b) (2) and (3) of this section for a discussion of computer software.

§ 291.4 Policy.

(a) *Compliance with the FOIA.* DNA personnel are expected to comply with the FOIA and this part in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DNA FOIA Program and to create conditions that will promote public trust. It is DNA policy to fully and completely respond to public requests for information concerning its operations and activities, consistent with national security objectives.

(b) *Openness with the Public.* 32 CFR part 286 states that all DoD employees shall conduct DoD activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records that are not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(c) *Avoidance of Procedural Obstacles.* DNA offices shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DNA records promptly. PAO shall provide

assistance to requesters to help them understand and comply with procedures established by this Instruction, the 32 CFR part 286 and any supplemental regulations published by DoD.

(d) *Prompt Action on Requests.* When a member of the public complies with the procedures established for obtaining DNA records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. When PAO has a significant number of requests, e.g., 10 or more, the requests shall be processed in order of receipt.

However, this does not preclude PAO from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. In addition, PAO may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the PAO.

(e) *Use of Exemptions.* It is DoD/DNA policy to make records publicly available, unless they qualify for exemption under one or more of the nine exemptions. Components may elect to make a discretionary release; however, a discretionary release is generally not appropriate for records exempt under exemptions 1, 3, 4, 6 and 7(C). Exemptions 4, 6 and 7(C) cannot be claimed when the requester is the submitter of the information.

(f) *Public Domain.* Nonexempt records released under the authority of this part are considered to be in the public domain. Such records may also be made available through the reading room channel to facilitate public access. Exempt records released pursuant to this part or other statutory or regulatory authority, however, may be considered to be in the public domain when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional committee, the released records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a Record.* (1) A record must exist and be in the possession of and in control of the DNA at the time of the search to be considered subject to this part and the FOIA. Mere possession of a record does not presume agency control, and such records, or identifiable portions thereof, would be referred to the originating agency for direct

response to the requester. There is no obligation to create or compile a record to satisfy a FOIA request. However, a DNA employee may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. The cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record.

(2) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, offices should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed where the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach.

(h) *Description of Requested Record.*

(1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record that will enable the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When DNA receives a request that does not "reasonably describe" the requested record, PAO shall notify the requester of the defect. The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined in paragraph (h)(2) of this section. DNA is not obligated to act on the request until the requester responds to the specificity letter. When practical, PAO shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the Agency in complying with the Act.

(2) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of

record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on DNA's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(4) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releaseable under the FOIA.

(5) The above guidelines notwithstanding, the decision of an office concerning reasonableness of description must be based on knowledge of its files. If the description enables office personnel to locate the record with reasonable effort, the description is adequate.

(i) *Reasons for not Releasing a Record.* (1) The request is transferred to another DoD component, or to another Federal agency.

(2) The request is withdrawn by the requester.

(3) The information requested is not a record within the meaning of the FOIA and 32 CFR part 286.

(4) A record has not been described with sufficient particularity to enable DNA to locate it by conducting a reasonable search.

(5) The requester has failed reasonably to comply with procedural requirements, including payment of fees, imposed by 32 CFR part 286 or this part.

(6) The DNA determines, through knowledge of its files and reasonable search efforts, that it neither controls nor otherwise possesses the requested record.

(7) The record is subject to one or more of the nine exemptions set forth in § 291.8, and a significant and legitimate government purpose is served by withholding.

§ 291.5 Responsibilities.

(a) The Director, DNA, as appellate authority, is responsible for reviewing and making the final decision on FOIA appeals.

(b) The DDIR, as IDA, is responsible for reviewing all initial denials to FOIA requests and has sole responsibility for withholding that information.

(c) The DNA FOIA Officer, who is also the Public Affairs Officer, manages and implements the DNA FOIA program. In this regard, the Public Affairs Officer serves as the FOIA point-of-contact and liaison between DNA and the Office of the Assistant Secretary of Defense (Public Affairs) (OASD(PA)), Directorate for Freedom of Information and Security Review (DFOI/SR). The Public Affairs Officer is responsible for:

(1) Advising OASD(PA), DFOI/SR, of any DNA denial of a request for records or appeals that may affect another DoD component.

(2) Ensuring publication of this part in the **Federal Register**.

(3) Ensuring that the Command Services Directorate publishes in the **Federal Register** a notice of where, how and by what authority DNA performs its functions.

(4) Ensuring that the Command Services Directorate publishes an index of DNA instructions in the **Federal Register**.

(5) Coordinating all FOIA actions, except routine, interim replies indicating initial receipt of a FOIA request through the appropriate DNA offices and the DNA General Counsel (GC).

(6) Forwarding all fees collected under the FOIA to the HQ, DNA, Finance and Accounting Officer for further processing.

(7) Coordinating action on FOIA requests that involve other government organizations (e.g., when DNA is not the original classifier for a classified document) with those organizations.

(8) Ensuring FOIA briefings are presented annually for DNA personnel.

(9) Submitting an annual report to OASD(PA), DFOI/SR, in accordance with the requirements of DoD Directive 5400.11.¹

(d) The Commander, FCDNA, is responsible for determining, based on current directives and instruction, what information in FCDNA custody may be released to FOIA requesters. (This responsibility may be delegated.) The Commander, FCDNA, is responsible for designating a representative to process FOIA requests. The Commander has the authority to release documents in

response to the FOIA. When FCDNA releases information under the FOIA, it will forward a copy of the request, the response and the appropriate cost sheet to HQ, DNA, ATTN: PAO (FOIA). FCDNA will not deny requests for information under the FOIA; instead, it will forward to HQ, DNA, PAO a recommendation and justification for denying the FOIA request.

(e) The Director, AFRRRI, is responsible for designating a representative to process FOIA requests and to forward them to HQ, DNA, (PAO) for coordination and preparation of a final response.

(f) The DNA GC shall coordinate on all DNA FOIA response except routine interim letters which acknowledge receipt of the FOIA request. That office shall also ensure uniformity in the legal position and interpretation by DNA of the FOIA, and coordinate with the DoD GC, as necessary.

(g) The HQ, DNA, Finance and Accounting Officer will ensure that fees collected under the FOIA are forwarded to the Finance and Accounting Office, U.S. Army, to be submitted to the Treasury of the United States.

(h) HQ, DNA, Assistant Director for Intelligence and Security, Classification Management Division (ISCM), will conduct security reviews of classified documents requested under the FOIA. ISCM will determine whether the document

(1) Contains information that meets requirements for withholding under Exemption 1 Executive Order 12356.

(2) Has information that meets requirements for withholding under Exemption 3, to include Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(3) Has information that may be declassified or sanitized. ISCM is also responsible for sanitizing DNA classified information from documents requested under the FOIA (refer to § 291.6(b)(5)). In addition, ISCM is responsible for advising the Assistant Director for Technical Information (CSTI) to notify the appropriate authorities when information has been reclassified as a result of a DNA FOIA review.

(i) HQ, DNA, CSLE will, upon request, ensure that photocopies are made of 50-page or larger documents being processed under the FOIA. (Copies are required only when documents are not available from other sources.)

(j) CSTI, Technical Library Division (TTL), will, upon notification from PAO that a document has been cleared for public release under the FOIA, retain the marked up document in its files, annotate the FOIA case number in the

computerized data base and ensure that the document is made available to the public through the National Technical Information Service (NTIS).

(k) Commander, FCDNA; Director, AFRRRI; and directors and chiefs of staff elements at HQ, DNA, will ensure that personnel are familiar with the procedures and contents of this part prior to acting on FOIA requests. They will also make sure that FOIA actions forwarded to their offices for processing are closely monitored to ensure accountability and that their input to PAO is provided in a timely manner and in accordance with this part. (Refer to § 291.7(b)(2)). If the office(s) cannot meet the FOIA suspense, they must request an extension. In addition, they will ensure that, upon request by PAO, appropriate technical personnel sanitize information such as unclassified technical data, that is determined to be exempt from disclosure under the FOIA. (Refer to § 291.7(b)(5)).

§ 291.6 Procedures.

(a) If HQ, DNA personnel receive a FOIA request that has not been logged and processed through PAO, they will immediately handcarry the request to PAO. TDNM and AFRRRI personnel will forward all FOIA requests to HQ, DNA, Attn: PAO. FCDNA will adhere to paragraph 6d and FCDNA Supplement to DNA Instruction 5400.7C.²

(b) When a FOIA request is received by PAO, HQ, DNA, the following procedures apply:

(1) The request will be date stamped, reviewed to determine if it meets the requirements of 5 U.S.C. 552, logged in, assigned an action number, suspended, and attached to a FOIA cover sheet with instructions for forwarding to the appropriate office. A copy of DD Form 2086 or DD Form 2086-1 will also be attached to the FOIA request.

(2) A copy of the request will be handcarried by PAO to the designated HQ, DNA, action office(s) or forwarded to AFRRRI or FCDNA, as appropriate. The office or component providing input for the FOIA request must keep track of the request and meet the PAO suspense. The HQ, DNA input, or negative response, if there are no records available, will be handcarried to PAO. AFRRRI will send the recommended response in daily distribution. FCDNA will telefax the proposed response in addition to mailing the original. All FOIA actions must include a completed DD Form 2086 or 2086-1. Each office

¹ Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

² Copies can be obtained from Defense Nuclear Agency PAO or SSAB, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310-3398.

acting on FOIA requests will indicate on the form the search, review/excise and coordination time spent processing the FOIA action, and provide the number of pages copied.

(3) The DNA PAO will prepare the response to the requester and coordinate it with the offices that provided input, the GC, and if appropriate, ISCM, the IDA, the Director, DNA, OASD(PA), and outside agencies, if involved. The PAO will maintain files of all FOIA actions per DNA Instruction 5015.4B.

(4) If a request is received by a DNA office which does not have records responsive but office personnel believe another office would have the records requested, they must contact the other office to confirm the existence of the documents, forward the FOIA action to that office and notify PAO.

(5) *FOIAs involving classified information.* When ISCM or contractor security reviewers receive a classified document from PAO for processing under the FOIA, they will conduct a security review to determine if the document may be sanitized or declassified. Most DNA documents requested under the FOIA are queued on a first-come, first-served basis and shall be reviewed in that order. When security reviewers determine that part or all of the information in a classified document may be sanitized or declassified, they will ensure that the appropriate copies are ordered from the Defense Technical Information Center (DTIC). The DTIC copy will be marked up during review. Cases not placed in queue will be suspended by PAO. They may include documents with less than 10 pages or documents under suspense from other organizations which require a DNA review. All DNA documents reviewed will be marked with a special pen that does not permit photocopying of the classified portions. Security review must include a detailed response providing the appropriate exemption(s) and justification for withholding.

When the Field Command Security Division (FCSS) receives a classified document for processing under the FOIA, they will conduct a security review to determine if the document may be sanitized or declassified. When FCSS determines that part or all of the information in a classified document may be sanitized or declassified, FCSS will make a copy which will be marked up during review. Upon completion of its review, FCSS will provide the marked up document and a sanitized version of the document to PAO. FCSS review must include a detailed response providing the appropriate exemption(s) and justification for withholding. When

ISCM/FCSS completes its review, ISCM/FCSS will forward the master copy to the appropriate technical office(s) for review. That office will determine whether the remaining unclassified information is releaseable and provide its response to ISCM/FCSS. If the office recommends that part or all of the information be withheld, then it must forward a detailed response providing the appropriate exemption(s) and justification for withholding. The technical office will return documents with results of their review to ISCM. ISCM will forward the results of both reviews to PAO for further processing. If either ISCM/FCSS or the DNA office reviewing the action recommends additional review by another agency, they will provide the full name and address of that agency with a technical point-of-contact, if known. PAO will forward the action to that organization for further review. When PAO receives that organization's review determination, it will forward the results to ISCM/FCSS. After all reviews are completed, ISCM/FCSS will sanitize the document and handcarry (FCSS will forward) the sanitized as well as the marked up copy to PAO for final processing.

(6) *FOIAs involving unclassified information.* The appropriate technical office(s) will review unclassified documents for release under the FOIA. If the office(s) determines that part or all of the document should be withheld, it must provide PAO a written recommendation with the appropriate exemption(s) (§ 291.8) and detailed reasons for withholding the information. Upon PAO request, the technical office(s) will sanitize the unclassified information that is being withheld. Sanitization will be done on a photocopy of the document or on a document that has been obtained from DTIC.

§ 291.7 Administrative Instruction.

(a) FOIA requesters shall clearly mark their requests as such, both on the envelope and in the body of the letter. Identification of the record desired is the responsibility of the FOIA requester. The requester must provide a description of the desired record that enables DNA to locate it with a reasonable amount of effort. The Act does not authorize "fishing expeditions." FOIA requests should be sent to the following address: Public Affairs Officer, Defense Nuclear Agency, Attention: FOIA, 6801 Telegraph Road, Alexandria, VA 22310-3398. Requester failure to comply with this section shall not be sole grounds of denial for requested information.

(b) FOIA appeals must be clearly marked as such, both on the envelope and in the body of the letter. Persons appealing DNA denial letters should include a copy of the denial letter, the case number, a statement of the relief sought and the grounds upon which it is brought. Appeals should be sent to the following address: Director, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310-3398.

(c) The time limitations for responding to legitimate FOIA requests are:

(1) Determinations to release, deny or transfer a record shall be made and the decision reported to the requester within 10 working days after the request is received in PAO.

(2) If additional time is needed to respond to a request, the requester will be notified within the 10-day period. When PAO has a significant number of requests, e.g., 10 or more, the requests shall be processed in order of receipt. However, this does not preclude PAO from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. PAO may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of the Public Affairs Officer.

(3) If a request for a record is denied and the requester appeals the decision of the IDA, the requester should file the appeal so that it reaches DNA no later than 60 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. A final determination on the appeal normally shall be made within 20 working days after receipt. If additional time is needed due to unusual circumstances, the final decision may be delayed for the number of working days (not to exceed 10), that were not utilized as additional time for responding to the initial request. If an appeal is denied, the Director, DNA, will notify the requester of the right to judicial review of the decision. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees.

(d) If DNA denies the requested document in whole or in part, the response must include detailed rationale for withholding information and the

specific exemption that applies so the requester can make a decision concerning appeal. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. Denial letters must also include the name and title of the IDA, and cite the name and address of the Director, DNA, as the appellate authority.

(e) All final responses will address the status of fees collectible under the FOIA. Fees of \$15 or less will be waived, regardless of category of requester.

(f) A formal reading room for the public, as defined in 32 CFR part 286, does not exist at DNA (HQ, FCDNA or AFRR) because of security requirements. However, the PAO will arrange for a suitable location and escort, if required, for members of the public to review DNA documents released under the FOIA. In addition, most reports released under the FOIA are sent to the National Technical Information Service (NTIS).

§ 291.8 Exemptions.

(a) *General.* Records that meet the exemption criteria listed in paragraph (b) below may be withheld from public disclosure and will not be published in the *Federal Register*, made available in a library, reading room, or provided in response to a FOIA request.

(b) *FOIA Exemptions.* The following types of records may be withheld in whole or in part from public disclosure under the FOIA, unless otherwise prescribed by law. A discretionary release (see also § 291.4(e)) to one requester may preclude the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest.

(1) *Number 1.* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1-R.³ Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The

procedures in DoD 5200.1-R, section 2-204f, apply. In addition, this exemption shall be invoked when the following situations are apparent:

(i) The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, DNA shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist will itself disclose national security information.

(ii) Information that concerns one or more of the classification categories established by executive order and DoD 5200.1-R shall be classified if its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security.

(2) *Number 2.* Those related solely to the internal personnel rules and practices of DNA. This exemption has two profiles, high b2 and low b2.

(i) Records qualifying under high b2 are those containing or constituting statutes, rules, regulations, orders, manuals, directives, and instructions, the release of which would allow circumvention of these records, thereby substantially hindering the effective performance of a significant function of the DNA. Examples include:

(A) Those operating rules, guidelines and manuals for DNA investigators, inspectors, auditors, or examiners that must remain privileged in order for the DNA office to fulfill a legal requirement.

(B) Personnel and other administration matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(C) Computer software meeting the standards of paragraph 291.3(b)(2)(iii), the release of which would allow circumvention of a statute or DoD rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be clearly examined to ensure a circumvention possibility exists.

(ii) Records qualifying under the low b2 profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include: Rules of

personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and trivial administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings.

(3) *Number 3.* Those containing matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(i) National Security Agency Information Exemption, Public Law 86-36, section 6.

(ii) Patent Secrecy, 35 U.S.C. 181-188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(iii) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(iv) Communication Intelligence, 18 U.S.C. 798.

(v) Authority to Withhold from Public Disclosure Certain Technical Data, 10 U.S.C. 130 and DoD Directive 5230.25.⁴

(vi) Confidentiality of Medical Quality Records: Qualified Immunity Participants, 10 U.S.C. 1102.

(vii) Physical Protection of Special Nuclear Material: Limitation on Dissemination of Unclassified Information, 10 U.S.C. 128.

(viii) Protection of Intelligence Sources and Methods, 50 U.S.C. 403 (d)(3).

(4) *Number 4.* Those containing trade secrets or commercial or financial information that DNA receives from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include:

(i) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets,

³ See footnote 1 to 291.5(c)(9).

⁴ See footnote 1 to § 291.5(c)(9).

inventions, discoveries, or other proprietary data. See 32 CFR part 286h, "Release of Acquisition-Related Information."

(ii) Statistical data and commercial or financial information concerning contract performance, income, profits, losses and expenditures, if offered and received in confidence from a contractor or potential contractor.

(iii) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(iv) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(v) Scientific and manufacturing processes or developments concerning technical or scientific data or other information, submitted with an application for a research grant, or with a report, while research is in progress.

(vi) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with title 10, U.S.C. 2320-2321 and DoD Federal Acquisition Regulation Supplement (DFARS), subpart 27.4. Technical data developed exclusively with Federal funds may be withheld under Exemption Number 3 if it meets the criteria of 10 U.S.C. 130 and DoD Directive 5230.25 (refer to paragraph (b)(3)(v)).

(vii) Computer software meeting the conditions of section 4 (b)(3), which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

(5) *Number 5.* Except as provided in paragraphs (b)(5)(i) through (v) of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decisionmaking process of any agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)) or within or among DoD/DNA offices. Also exempted are records pertaining to the attorney-client

privilege and the attorney work-product privilege.

(i) Examples include:

(A) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

(B) Advice, suggestions, or evaluations prepared on behalf of the DNA by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(C) Those nonfactual portions of evaluations by DNA personnel of contractors and their products.

(D) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(E) Trade secret or other confidential research, development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interests.

(F) Records that are exchanged among agency personnel as part of the preparation for anticipated administrative proceedings by DNA, or litigation before any federal, state, or military court, as well as records that qualify for the attorney-client privilege.

(G) Those portions of official reports of inspection, reports of the Inspector General, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of DNA when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(H) Computer software meeting the standards of paragraph 291.3(b)(2)(iii), which is deliberative in nature, the disclosure of which would inhibit or chill the decision-making process. In this situation, the use of software must be closely examined to ensure its deliberative nature.

(I) Planning, programming, and budgetary information which is involved in the defense planning and resource allocation process.

(ii) If any such intra- or inter-agency record or reasonably segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with DNA, i.e., the process by

which litigants obtain information from each other that is relevant to the issues in trial or hearing, then it should not be withheld from the general public even though "discovery" has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this part. Consult with legal counsel to determine whether exemption 5 material would be routinely made available through the "discovery process".

(iii) Intra- or inter-agency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(iv) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(v) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(6) *Number 6.* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of Records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties.

(i) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(A) Those compiled to evaluate or adjudicate the suitability of candidates

for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(B) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(ii) Home addresses are normally not releasable without the consent of the individuals concerned. In addition, lists of DoD military and civilian personnel's names and duty addresses who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(A) Privacy interest. A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(B) Published telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption.

(iii) This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(iv) Individuals' personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with DoD Directive 5400.11.

(v) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record. When withholding personal information from the subject of the record, legal counsel should first be consulted.

(7) *Number 7.* Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of executive orders or regulations issued pursuant to law. This exemption may be

invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes.

(i) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(A) Could reasonably be expected to interfere with enforcement proceedings.

(B) Would deprive a person of the right to a fair trial or to an impartial adjudication.

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(1) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, DNA shall neither confirm nor deny the existence or nonexistence of the record being requested.

(2) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

(3) Refusal to confirm or deny should not be used when the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or the person whose personal privacy is in jeopardy is deceased, and DNA is aware of that fact.

(D) Could reasonably be expected to disclose the identity of a confidential source including a source within DNA, a state, local or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(E) Could disclose confidential information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(F) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(G) Could reasonably be expected to endanger the life, or the physical safety of any individual.

(ii) Examples include:

(A) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(B) The identity of firms or individuals being investigated for alleged irregularities involving contracting with DNA when no indictment has been obtained nor any civil action filed against them by the United States.

(C) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within DNA, or a lawful national security intelligence investigation conducted by an authorized agency or office within DNA. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(iii) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500) is not diminished.

(iv) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by DoD Directive 5400.11.

(v) *Exclusions.* Excluded from the previous exemptions are the following two situations applicable to the Department of Defense.

(A) Whenever a request is made which involves access to records or information compiled for law enforcement purposes and the investigation or proceedings involves a possible violation or criminal law where there is reason to believe that the subject of the investigation or proceedings is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings. Components may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such situation, the response to the requester will state that no records were found.

(B) Whenever informant records maintained by a criminal law enforcement organization within a DoD component under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the Component may treat the records as not subject to

the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to exemption 7, the response to the requester will state that no records were found.

(8) *Number 8.* Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) *Number 9.* Those containing geological and geophysical information and data (including maps) concerning wells.

§ 291.9 For official use only (FOUO).

Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA exemptions 2 through 9 shall be considered as being for official use only. No other material shall be considered or marked "For Official Use Only" (FOUO) and FOUO is not authorized as an anemic form of classification to protect national security interests. See DNA Instruction 5230.2A * for additional information regarding FOUO policy.

(a) *Prior FOUO Application.* The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

(b) *Historical Papers.* Records, such as notes, working papers, and drafts retained as historical evidence of DNA actions enjoy no special status apart from the exemptions under the FOIA.

(c) *Time to Mark Records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not bear such markings, shall not be assumed to be releaseable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(d) *Distribution Statement.* Information in a technical document that requires a distribution statement pursuant to DNA Instruction 5230.24A

shall bear that statement and may be marked FOUO, as appropriate.

(e) *Termination.* The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

(f) *Disposal.* (1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

(2) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. chapter 33, as implemented by DNA instructions concerning records disposal.

(g) *Unauthorized Disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DNA information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act, may also result in civil and criminal sanctions against responsible persons. The DNA office that originated the FOUO information shall be informed of its unauthorized disclosure.

Appendix A to part 291—Freedom of Information Act Request (DNA Form 524)

Suspense Item—Freedom of Information Act Request

Date _____
Information Required in PAO NLT _____
FOIA Case No. _____
To: _____
Special Instructions: _____

Please conduct a search within your organization to determine if there is information/documents responsive to the attached FOIA request.

If you recommend withholding information from the documents requested, please refer to the FOIA exemptions listed on the reverse.

If this request is for a technical proposal, please provide the name and address for the contact person at the company which was awarded the contract and the name and office symbol to the TM.

Record time spent on this request and the number of pages copied on the enclosed DD Form 2086.

If you believe other DNA offices should be involved in processing this request, please advise PAO ASAP.

If you have any questions call PAO, 57095 or 57306. Do not place this FOIA action in distribution.

Enclosures:
DNA Form 524 (28 June 90) Previous Editions Obsolete.

Explanation of Exemptions

Freedom of Information Act (5 USC 552)

(b)(1) Applies to information which is currently and properly classified pursuant to an Executive Order in the interest of national defense or foreign policy. (See Executive Order 12356, DoD Regulation 5200.1-R and DNA Instruction 5400-7C.)

(b)(2) Applies to information which pertains solely to the internal rules and practices of the Agency; this exemption has two profiles, "high" and "low." The "high" profile permits withholding of a document which, if released, would allow circumvention of an agency rule, policy, or statute, thereby impeding the agency in the conduct of its mission. The "low" profile permits withholding if there is no public interest in the document, and it would be an administrative burden to process the request.

(b)(3) Applies to information specifically exempted by a statute establishing particular criteria for withholding. The language of the statute must clearly state that the information will not be disclosed.

(b)(4) Applies to information such as trade secrets and commercial or financial information obtained from a company on a privileged or confidential basis which, if released, would result in competitive harm to the company.

(b)(5) Applies to inter- and intra-agency memoranda which are deliberative in nature; this exemption is appropriate for internal documents which are part of the decision making process, and contain subjective evaluations, opinions and recommendations.

(b)(6) Applies to information release of which could reasonably be expected to constitute a clearly unwarranted invasion of the personal privacy of individuals; and

* See footnote 2, to § 291.6(a)

(b)(7) Applies to records or information compiled for law enforcement purposes that (A) could reasonably be expected to interfere with law enforcement proceedings, (B) would deprive a person of a right to a fair trial or impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of others, (D) disclose the identity of a confidential source, (E) disclose investigative techniques and procedures, or (F) could reasonably be expected to endanger the life or physical safety of any individual.

(b)(8) Permits the withholding of matters contained in, or related to, examination, operating or conditions reports prepared by, on behalf of, or for the use of, an agency responsible for the regulation and supervision of financial institutions.

(b)(9) Permits the withholding of geological information and data including maps, concerning wells.

[FR Doc. 91-5271 Filed 3-7-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD7 91-11]

Special Local Regulations: St. Johns River, Jacksonville, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the American Cancer Society Great Duck Race. The event will be held from 11 a.m. EST to 2 p.m. EST on March 23, 1991 on the St. Johns River, Jacksonville, Florida. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective from 11 a.m. EST to 2 p.m. EST on March 23, 1991.

FOR FURTHER INFORMATION CONTACT: LCDR D.P. Rudolph, (904) 247-7318.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule-making procedures would have been impractical. The application to hold the event was not received until December 2, 1990, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are QM1 Culver, Marine Event Petty Officer,

Coast Guard Group Mayport and LT Genelle G. Tanos, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

This event is held each year to raise funds for the American Cancer Society. There will be thirty thousand (30,000) rubber ducks dumped into the river by two (2) frontend loaders at the Acosta Bridge. The ducks float to the Main Street Bridge where the first three (3) are retrieved for awards; and the remaining ducks are all gathered up by the U.S. Navy with special skimmer boats.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-T07-11 is added to read as follows:

§ 100.35-T07-11 American Cancer Society Great Duck Race.

(a) *Regulated Area:* A regulated area is established for the waters of the St. Johns River lying between St. Johns River Acosta Bridge and St. Johns River Main Street Bridge, Jacksonville, Florida.

(b) *Special Local Regulations:* Entry into the regulated area is prohibited unless authorized by the Patrol Commander.

(c) *Effective Date:* These regulations become effective from 11 a.m. EST to 2 p.m. EST on March 23, 1991.

Dated: February 28, 1991.

R.E. Kramek,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 91-5561 Filed 3-7-91; 8:45 am]

BILLING CODE 4810-14-M

33 CFR Part 100

[CGD7 91-12]

Special Local Regulations: City of Augusta, GA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for the Augusta Invitational Rowing Regatta. The event will be held from 7 a.m. on March 28, 1991, until 5 p.m. on March 31, 1991, on the Savannah River at Augusta, Georgia. The regulations are needed to promote the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will become effective from 7 a.m. EST, March 28, 1991 to 5 p.m. EST, on March 31, 1991.

FOR FURTHER INFORMATION CONTACT: Contact Cdr. A.A. Sarra, (803) 724-7619.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical. The updated information to hold the event was not received until January 17, 1991, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of these regulations are QM1 David A. Fields, Marine Event Petty Officer, Coast Guard Group Charleston, project officer and Lt. Genelle G. Tanos, Seventh Coast Guard District Legal Office, project attorney.

Discussion of Regulations

There will be 800 participants racing 4 and 8 man racing shells on a fixed course. The event will take place on that portion of the Savannah river at Augusta, Georgia, between the U.S. Highway 1 Bridge and mile marker 197. These regulations are required to promote the safety of life and property on the navigable waters during the Augusta Invitational Rowing Regatta.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the

preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35-T07-12 is added as follows:

§ 100.35-T07-12 Augusta Invitational Rowing Regatta.

(a) *Regulated Area.* A regulated navigation area is established on that portion of the Savannah River at Augusta, Georgia between U.S. Highway 1 (Fifth Street) Bridge at mile marker 199.45 and Eliot's Fish Camp at mile marker 197. Four overhead cables will be established to delineate the racing lanes on the course, as well as floats on the surface of the river to mark the lane separations.

(b) *Special Local Regulations.* Entry into the regulated area is prohibited. After termination of the Augusta Invitational Regatta on March 31, 1991, all vessels may resume normal operation.

(c) *Effective Date.* These regulations become effective from 7 a.m. EST on March 28, 1991 to 5 p.m. EST, March 31, 1991.

Dated: March 1, 1991.

R.E. Kramek,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 91-5562 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-91-06]

Special Local Regulations for Marine Events; Crawford Bay Crew Classic; Southern Branch, Elizabeth River, Portsmouth, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for the Crawford Bay Crew Classic to be held on the Southern Branch, Elizabeth River, at Portsmouth, Virginia. The event will consist of crew shells racing in heats on a course from Mobil Oil to Portside, Portsmouth. These

regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective for the following periods: 2 p.m. to 7 p.m. March 22, 1991. 6 a.m. to 6 p.m. March 23, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the event was not received in the district office until January 31, 1991, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Ports Events Inc. has submitted an application to hold the Crawford Bay Crew Classic on the Southern Branch of the Elizabeth River at Portsmouth, Virginia. Crew racing shells will be racing in heats starting in the vicinity of the Mobil Oil Docks and will finish in the vicinity of Portside, Portsmouth. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. Marine traffic will be allowed to transit the regulated area between races. Since the main shipping channel will not be closed for extended periods of time, commercial traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered either major under Executive Order 12291 on Federal Regulation or significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of

this minimal impact, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in permanent regulations 33 CFR 100.515 rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water).

Final Regulations: In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35-T06 is added to read as follows:

§ 100.35-T06 Southern Branch, Elizabeth River, Portsmouth, Virginia.

(a) *Definitions.* (1) *Regulated area.* The waters of the Southern Branch, Elizabeth River from shoreline to shoreline bounded to the south by a line drawn from latitude 36°49'11.0" North, longitude 76°17'33.0" West to latitude 36°49'11.0" North, longitude 76°17'22.0" West and bounded to the north by a line drawn from latitude 36°50'17.5" North, longitude 76°17'45.0" West to latitude 36°50'17.5" North, longitude 76°17'30.0" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Hampton Roads.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander,

no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) *Effective Dates.* These regulations are effective for the following periods: 2 p.m. to 7 p.m. March 22, 1991. 6 a.m. to 6 p.m. March 23, 1991.

Dated: February 28, 1991.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 91-5559 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 110

[CGD11-90-08]

Anchorage Regulations: San Diego Harbor, CA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard, under the authority of 33 U.S.C. 471, is expanding the "B" Street Commercial Anchorage (33 CFR 110.210(a)(2)) and establishing an additional anchorage ground under the administrative control of COMNAVBASE San Diego reserved exclusively for the anchorage of vessels of the United States Government, for the purpose of increasing navigational safety in San Diego Harbor. This action was a result of requests from the San Diego Unified Port District and U.S. Navy. It was determined that there is an increasing number of larger commercial vessels needing to anchor in San Diego Harbor and the size of the current anchorage was not sufficient for safe navigation. Also, the Navy has been increasing its use of San Diego Harbor and requires specified anchorage areas for its operations to be conducted safely.

EFFECTIVE DATE: April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Lieutenant Edward Sinclair, Eleventh Coast Guard District Aids to Navigation and Waterways Management Branch, 400 OceanGate, Long Beach, CA 90822-5399, telephone (213) 499-5410.

SUPPLEMENTARY INFORMATION: On Friday, November 9, 1990, the Coast

Guard published a notice of proposed rule making in the *Federal Register* for these regulations 55 FR 47075. Interested persons were requested to submit comments and none were received.

Drafting Information

The drafters of the anchorage regulations are Lieutenant Edward Sinclair, Project Officer, Eleventh Coast Guard District Aids to Navigation and Waterways Management Branch, Lieutenant (junior grade) Edward Bass, Project Officer, U.S. Coast Guard Marine Safety Office, San Diego, CA, and Lieutenant Commander Allen Lotz, Projecting Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received concerning this rule making.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. These regulations do not change federal policy regarding the use of navigable waters for navigation purposes.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

These regulations contain no information collection or record keeping requirements.

Environmental Assessment

The Coast Guard has considered the environmental impact of these regulations and concluded that under section 2.B.2.c of Commandant Instruction M16475.1B, they will have no significant environmental impact and they are categorically excluded from further environmental documentation.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

In consideration of the foregoing, part 110 of title 33, Code of Federal Regulations, is amended as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05-1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.210 is revised to read as follows:

§ 110.210 San Diego Harbor, CA.

(a) The anchorage grounds. (1) Special anchorage for U.S. Government vessels (NAD 83). The waters bounded by a line connecting the following points:

Latitude	Longitude
32°42'13.2" N	117°14'11.0" W
32°41'12.0" N	117°14'00.3" W

and thence along the shoreline to the point of beginning.

(2) Special anchorage for U.S. Government vessels (NAD 83). The waters bounded by a line connecting the following points:

Latitude	Longitude
32°43'25.6" N	117°12'48.1" W
32°43'25.3" N	117°12'52.0" W
32°43'08.2" N	117°12'58.0" W
32°42'57.9" N	117°12'54.0" W

and thence easterly along the northern boundary of the channel to:

32°43'05.0" N	117°11'30.5" W
32°43'27.2" N	117°11'14.0" W

and thence along the shoreline of Harbor Island to the point of beginning.

(3) "B" Street Merchant Vessel Anchorage (NAD 83). The waters bounded by a line connecting the following points:

Latitude	Longitude
32°43'00.8" N	117°10'36.3" W
32°43'00.8" N	117°11'23.0" W
32°43'05.0" N	117°11'30.5" W
32°43'27.2" N	117°11'14.0" W
32°43'20.2" N	117°10'53.0" W

and thence due east to the shoreline, and thence along the shoreline and pier to the point of beginning.

(b) The regulations. (1) The anchorages described in paragraphs (a)(1) and (a)(2) of this section are reserved exclusively for the anchorage of vessels of the United States Government and of authorized harbor pilot boats. No other vessels shall anchor in this area except by special permission obtained in advance from the Commander, Naval Base, San Diego, CA. The administration of these anchorages is exercised by the

Commander, Naval Base, San Diego, CA.

(2) The area described in paragraph (a)(3) of this section is reserved for the use of merchant vessels calling at the Port of San Diego while awaiting a berth. The administration of this anchorage is exercised by the Port Director, San Diego Unified Port District.

(3) Vessels anchoring in San Diego Harbor shall leave a free passage for other craft and shall not obstruct the approaches to the wharves in the harbor.

Dated: January 30, 1991.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 91-5560 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900-AC90

Loan Guaranty: Credit Underwriting Standards and Procedures for Processing VA Guaranteed Loans; Specially Adapted Housing

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: To comply with the provisions of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1988, the Department of Veterans Affairs (VA) is amending its regulations (1) by making the specially adapted housing grant authorized by 38 U.S.C. 1801(b) available for acquiring a residence that has already been adapted with special features; (2) by adding to the regulations the credit standards to be used in underwriting a VA guaranteed home loan; (3) by adding to the regulations the standards and procedures to be used by lenders in obtaining credit information for, and in processing, VA guaranteed loans; and (4) by providing for a lender certification, and a process for assessing liability against a lender and an appeal process for such assessment. The regulations governing VA direct loans are also being amended to require use of the proposed credit standards regulations.

EFFECTIVE DATE: These regulations are effective April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Caden, Assistant Director for Loan Policy (264), Loan Guaranty

Service, Veterans Benefits Administration, (202) 233-3042.

SUPPLEMENTARY INFORMATION: The credit standards used in underwriting VA guaranteed home loans are currently stated in the Veterans Benefits Administration Circular 26-80-11, revised December 21, 1989. The standards for obtaining credit reports and processing guaranteed loans have also been published in administrative issues.

On February 12, 1990, VA published in the *Federal Register* on pages 4869 through 4879 proposed regulations to implement the requirements of Public Law 99-576. A total of eleven letters of comment were received on the proposed regulations. Eight were from mortgage bankers or other lenders and their representatives. Two letters were received from associations representing realtors and home builders. One letter was received from VA Regional Office personnel.

As required by Public Law 99-576, these regulatory amendments contain standards to be used by all lenders, both supervised and unsupervised, in underwriting VA guaranteed loans and obtaining credit information. They include (1) a debt-to-income ratio, (2) minimum residual income guidelines, (3) criteria for evaluating the reliability and stability of the income of the loan applicant, and (4) standards to be used by lenders in obtaining credit information for, and in processing, VA guaranteed loans.

There are two possible ways lenders may process VA guaranteed home loans. Loans which are processed on the prior approval basis are forwarded by the lender to VA for approval of the loan prior to closing. VA underwrites the loan by reviewing the income and credit of the prospective borrower and advises the lender if VA will guarantee the loan. Loans which are processed on the automatic basis are underwritten by the lender and reported to VA after they are closed. Two types of lenders may process VA loans on the automatic basis. Supervised lenders who are subject to examination and supervision by Federal or State agencies need no special authorization to process VA loans on the automatic basis. Nonsupervised lenders who have received specific approval from VA may also process loans, on the automatic basis.

There are two primary underwriting tools that are used in determining a veteran's ability to meet living expenses including the monthly mortgage payment. They are a debt-to-income ratio and a calculation of a veteran's

residual income. The ratio is a result of comparing the veteran's total anticipated monthly obligations, including housing expenses, to his or her stable monthly income. Currently, the debt-to-income ratio for VA loans is 41 percent and that is the ratio established in these regulations. Based on available statistical data, standards are provided in these regulations regarding the recommended residual income for a veteran.

As proposed, these regulations required that, in certain cases, depending upon the ratio and residual income, some loans would require specific written justification if made automatically by lenders having automatic underwriting authority. In other cases not meeting established standards the loans would have to be submitted to VA for prior approval of the loan.

All but one of the commentators expressed opposition to the requirement that VA process, on the prior-approval basis, those loans falling outside established thresholds. Mortgage lenders, their representatives and VA field personnel expressed concern about mandatory prior approval of these loans by VA for several reasons.

First, lenders felt that establishing thresholds for the mortgage underwriting process was unreasonable altogether. As one commentator stated, "underwriting is qualitative. It is inappropriate and unrealistic to use an arbitrary relationship between a credit ratio and residual income to serve as an eligibility threshold." VA does not feel that the relationship between a potential borrower's credit ratio and residual income is by any means arbitrary, but acknowledges that underwriting is judgment-oriented and absolute eligibility thresholds for qualifying for VA-guaranteed loans would be inappropriate. At the same time, standards must be used as baselines for qualifying loans. VA's thresholds for underwriting authority are absolutes with regard to who may underwrite or what level of justification must be provided, not whether a lender must deny a loan which falls outside the threshold. The thresholds established in these regulatory amendments are indicators delineating the level of underwriting approval needed on certain loans, based upon the anticipated risk associated with each case. Those loans carrying the highest degree of risk, i.e., those loans falling outside the established thresholds, would be subjected to underwriting review by VA in addition to the lender.

Several commentators argued that mandatory VA prior approval or riskier loans would lead to increased foreclosures because lenders are generally more prudent than the Department. One lender cited statistics it compiled showing the foreclosure rate for VA-guaranteed loans closed on the automatic basis is more than 25% lower than the foreclosure rate for prior approvals. VA has not verified those statistics but we believe the commentator has oversimplified the issues involved in underwriting meritorious but risky loans. By and large the loans that come to VA for prior approval are those that do not meet the credit ratios and residual income thresholds but are yet deemed meritorious enough by lenders for VA to underwrite. Since the loans submitted for prior approval are usually the riskier ones it is not surprising that they carry a higher foreclosure rate.

A number of commentators were concerned that the prior approval requirement was not fully addressing the basic problem. Rather than penalize all VA lenders, at least two commentators suggested VA punish those lenders who contribute to the foreclosure problems by either eliminating or restricting their activities. VA does exercise its authority to restrict lending activities of imprudent lenders who choose to participate in VA's Loan Guaranty Program and rejects the notion that these underwriting standards "punish" any lenders.

A more compelling argument against the mandatory prior approval requirement was expressed by several commentators, including VA Loan Guaranty field personnel. These commentators were concerned that the increased workload on field station personnel would result in processing delays of all VA-guaranteed loans. One commentator expressed serious reservations about whether requiring VA staff to underwrite marginal cases would be an efficient use of VA's available staff resources. One mortgage lender, noting its high servicing volume and low default rate, indicated that, nevertheless, over one-third of its recent VA loans would have required VA prior approval under the regulation as proposed. The letter of comment submitted by VA field personnel suggested that lenders be allowed to approve loans on the automatic basis when the debt-to-income ratio is greater than 50% and the veterans' income meets or exceeds the standard provided the lender justifies the decision.

VA is persuaded by these comments to amend the proposed regulations. As

amended, these regulations would not require lenders to submit to VA for prior approval loans not falling into the established ratio and residual income guidelines. Lenders will still be required to provide specific written justification by the underwriter's supervisor on loans that do not meet the established guidelines but are considered meritorious nonetheless.

All loans in which (1) the veteran's debt-to-income ratio is 41 percent or less and the veteran does not meet the residual income standard, and (2) the veteran's debt-to-income ratio exceeds 41 percent and the residual income does not exceed the VA standard by at least 20 percent, will require justification by the underwriter's supervisor. These loans will also be subject to a detailed review by VA field personnel prior to issuance of the guaranty as well as post-audit review.

Every loan applicant should be judged on an individual basis. In addition to the ratio and residual income requirements, there are compensating factors that may impact on the approval or disapproval of a loan. These factors have been placed in the regulations in § 36.4337(b)(6).

The list is not exhaustive and the items are not in any priority order. It should be recognized that valid compensating factors should represent unusual strengths rather than mere satisfaction of basic program requirements. For example, the fact that an applicant has sufficient assets for closing purposes, or meets the residual income guidelines are not compensating factors. Additionally, compensating factors should be relevant to the perceived marginality or weakness; i.e., significant liquid assets may compensate for a residual income shortfall whereas long-term employment would not. It would not be appropriate to apply these factors to cases involving unsatisfactory credit.

Two further comments were submitted on related aspects of the regulatory amendments. In the first of these the commentator requested that all loans submitted to VA for prior approval be exempted from designation as "no-bids". VA determines which loans are "no bids" by comparing the value of the property at foreclosure to the outstanding indebtedness less guaranty amount. If the foreclosed property is worth less than the outstanding indebtedness minus guaranty amount the loan is considered a "no-bid" and VA will pay the guaranty rather than take the property.

We fail to see how whether the loan was underwritten by a lender using the

automatic process or by VA as a prior approval should affect the post-foreclosure determination of whether a loan is a "no-bid". Pursuant to Public Law 98-369, the Deficit Reduction Act of 1984, VA is required to conduct a post-foreclosure "no-bid" calculation on each loan that goes into foreclosure. The law does not allow for any distinction between automatic and prior approval loans with regard to no-bid determinations.

These regulations require lenders to certify that each loan package prepared or underwritten has been developed in accordance with 38 CFR part 36. Each lender is also required to certify that, to the best of his/her knowledge and belief, all information included in the credit package is true and accurate. A final letter of comment requested that VA release lenders from liability on a false certification if a third party outside the lender's control is responsible for the fraud or misrepresentation. It was never VA's intention to hold the lender responsible for fraud or misrepresentation of an independent third party. The lender is liable for its own fraud or misrepresentation and that of its agents. The lender would only be liable for fraud or misrepresentation by a third party if the lender was negligent in protecting against or discovering such fraud or misrepresentation. Accordingly, the lender must exercise due diligence in determining the validity of representations made by third parties.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The credit underwriting standards and procedures for obtaining credit information and processing VA guaranteed loans contained in these regulations are similar to those which are currently in effect. They have been published previously in administrative issues and released to participating lenders. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

The regulatory amendments have been reviewed under Executive Order 12291, entitled Federal Regulations, and are not considered major regulatory changes as defined in the Executive Order. These regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of \$100 million or more and will not cause a major increase in costs or prices for

consumers, individual industries, government agencies, or geographic regions; nor will they have other significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirements contained in section 36.4337 of these regulatory amendments have been approved by the Office of Management and Budget (OMB) under control number 2900-0521.

The Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

This amendment is made under the authority granted the Secretary by sections 210(c), 1803(c)(i), 1810(b), 1832 and 1812 of title 38, United States Code, and Public Law 99-576.

Approved: January 18, 1991.

Edward J. Derwinski,
Secretary of Veterans Affairs.

PART 36—[AMENDED]

38 CFR part 36, Loan Guaranty, is amended as follows:

1. In § 36.4206, the section heading is revised, paragraph (b) is redesignated as paragraph (d), paragraph (a) is revised, and new paragraphs (b) and (c) are added to read as follows:

§ 36.4206 Underwriting standards, occupancy, and non-discrimination requirements.

(a) Except for refinancing loans pursuant to 38 U.S.C. 1812(a)(1)(F), no loan shall be guaranteed unless the terms of repayment bear a proper relationship to the veteran's present and anticipated income and expenses, and the veteran is a satisfactory credit risk, as determined by use of the standards in § 36.4337 of this part.

(Authority: 38 U.S.C. 1812)

(b) Use of the standards in § 36.4337 of this part for underwriting manufactured home loans will be waived only in extraordinary circumstances.

(Authority: 38 U.S.C. 1812)

(c) The lender responsibilities contained in § 36.4337 of this part and the certification required and penalties to be assessed under § 36.4337A of this

part against lenders making false certifications also apply to lenders originating VA guaranteed manufactured home loans under the authority of 38 U.S.C. 1812.

(Authority: 38 U.S.C. 1812)

* * * * *

§§ 36.4207 and 36.4208 [Amended]

2. In §§ 36.4207 and 36.4208 in the headings and text, remove the words "Mobile" and "mobile" wherever they appear and add, in their place, the words "Manufactured" and "manufactured", respectively.

3. An undesignated center heading and § 36.4337 are added to read as follows:

Underwriting Standards, Processing Procedures, and Lender Responsibility and Certification

§ 36.4337 Underwriting standards, processing procedures, lender responsibility and lender certification.

(a) Except for refinancing loans guaranteed pursuant to 38 U.S.C. 1810(a)(8), the standards contained in paragraph (b) of this section will be used to determine that the veteran's present and anticipated income and expenses, and credit history are satisfactory.

(b) *Methods.* There are two primary underwriting tools that will be used in determining the adequacy of the veteran's present and anticipated income. They are: debt-to-income ratio and residual income. Each is described in paragraphs (c) and (d) of this section respectively. Ordinarily, in order to qualify for a loan, the veteran must meet both standards. Failure to meet one standard, however, will not automatically disqualify a veteran. The following shall apply to cases where a veteran does not meet both standards:

(1) If the debt-to-income ratio is 41 percent or less, and the veteran does not meet the residual income standard, the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (b)(4) of this section.

(2) If the debt-to-income ratio is greater than 41 percent, (unless it is larger due solely to the existence of tax-free income which should be noted in the loan file) the loan may be approved with justification, by the underwriter's supervisor, as set out in paragraph (b)(4) of this section.

(3) If the ratio is greater than 41 percent and the residual income exceeds the guidelines by at least 20 percent the second level review and statement of justification is not required.

(4) In any case described by paragraphs (b)(1) and (b)(2) of this

section, the lender must fully justify the decision to approve the loan or submit the loan to the Secretary for prior approval in writing. The lender's statement must not be perfunctory, but should address the specific compensating factors, as set forth in (b)(5), of this section, justifying the approval or submission of the loan. The statement must be signed by the underwriter's supervisor. It must be stressed that the statute requires not only consideration of a veteran's present and anticipated income and expenses, but also that the veteran be a satisfactory credit risk. Therefore, meeting both the debt-to-income ratio and residual income standards does not mean the loan is automatically approved. It is the lender's responsibility to base the loan approval or disapproval on all the factors present for any individual veteran. The veteran's credit must be evaluated based on criteria set forth in paragraph (c) of this section as well as a variety of compensating factors that should be evaluated.

(5) The following are examples of acceptable compensating factors to be considered in the course of underwriting a loan:

- (i) Excellent long-term credit;
- (ii) Conservative use of consumer credit;
- (iii) Minimal consumer debt;
- (iv) Long-term employment;
- (v) Significant liquid assets;
- (vi) Downpayment or the existence of equity in refinancing loans;
- (vii) Little or no increase in shelter expense;
- (viii) Military benefits;
- (ix) Satisfactory homeownership experience;
- (x) High residual income; and
- (xi) Low debt-to-income ratio.

This list is not exhaustive and the items are not in any priority order. Valid compensating factors should represent unusual strengths rather than mere satisfaction of basic program requirements. Compensating factors must be relevant to the marginality or weakness.

(c) *Debt-to-income-ratio.* A debt-to-income ratio that compares the veteran's anticipated monthly housing expense and total monthly obligations to his or her stable monthly income will be computed to assist in the assessment of the potential risk of the loan. The ratio will be determined by taking the sum of the monthly Principal, Interest, Taxes and Insurance (PITI) to the loan being applied for, homeowners and other assessments such as special assessments, condominium fees,

homeowners association fees, etc., and any long-term obligations divided by the total of gross salary or earnings and other compensation or income. The ratio should be rounded to the nearest two digits; i.e., 35.6 percent would be rounded to 36 percent. The standard is 41 percent or less. If the ratio is greater than 41 percent (unless it is larger due solely to the existence of tax free income which should be noted in the loan file) the steps cited in paragraphs (b)(1) through (b)(5) of this section apply.

(d) *Residual income.* (1) The guidelines provided in this subparagraph for residual income will be used to determine whether the veteran's monthly residual income will be adequate to meet living expenses after estimated monthly shelter expenses have been paid and other monthly obligations have been met. The guidelines for residual income are based on data supplied in the Consumer Expenditure Survey (CES) published by the Department of Labor's Bureau of Labor Statistics. Regional minimum incomes have been developed for loan amounts up to \$69,999 and for loan amounts of \$70,000 and above. It is recognized that the purchase price of the property may affect family expenditure levels in individual cases. This factor may be given consideration in the final determination in individual loan analyses. For example, a family purchasing in a higher-priced neighborhood may feel a need to incur higher than average expenses to support a lifestyle comparable to that in their environment, whereas a substantially lower-priced home purchase may not compel such expenditures. It should also be clearly understood from this information that no single factor is a final determinant in any applicant's qualification for a VA guaranteed loan. Once the residual income has been established, other important factors must be examined. One such consideration is the amount being paid currently for rental or housing expenses. If the proposed shelter expense is materially in excess of what is currently being paid, the case may require closer scrutiny. In such cases, consideration should be given to the ability of the borrower and spouse to accumulate liquid assets; i.e., cash and bonds, and to the amount of debts incurred while paying a lesser amount for shelter. For example, if an application allows little or no capital reserves and excessive obligations, it may not be reasonable to conclude that a substantial increase in shelter expenses can be absorbed. Another factor of prime importance is

the applicant's manner of meeting obligations. A poor credit history alone is a basis for disapproving a loan, as is an obviously inadequate income. When one or the other is marginal, however, the remaining aspect must be closely examined to assure that the loan applied for will not exceed the applicant's ability or capacity to repay. Therefore, it is important to remember that the figures provided below for residual income are to be used as a guide and should be used in conjunction with the steps outlined in paragraphs (b)(1) through (b)(6) of this section. The residual income guidelines are as follows:

(i) Table of residual incomes by region (for loan amounts of \$69,999 and below):

TABLE OF RESIDUAL INCOMES BY REGION
[For Loan Amounts of \$69,999 and Below]

Family size ¹	North-east	Mid-west	South	West
1.....	\$348	\$340	\$340	\$379
2.....	583	570	570	635
3.....	702	687	687	765
4.....	791	773	773	861
5.....	821	803	803	894

¹ For families with more than five members, add \$70 for each additional member up to a family of seven.

(ii) Table of residual incomes by region (for loan amounts of \$70,000 and above):

TABLE OF RESIDUAL INCOMES BY REGION
[For loan amounts of \$70,000 and above]

Family size ¹	North-east	Mid-west	South	West
1.....	\$401	\$393	\$393	\$437
2.....	673	658	658	733
3.....	810	792	792	882
4.....	913	893	893	995
5.....	946	925	925	1,031

¹ For families with more than five members, add \$75 for each additional member up to a family of seven.

(iii) *Geographic regions for residual income guidelines:* Northeast—Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont; Midwest—Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin; South—Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, Puerto Rico, South Carolina, Tennessee, Texas, Virginia, and West Virginia; West—Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana,

Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(iv) *Military adjustments:* For loan applications in which either the borrower or the spouse is an active-duty serviceperson, the residual income figures will be reduced by a minimum of 5 percent if there is a clear indication that the borrower or spouse will continue to receive the benefits resulting from the use of facilities on a nearby military base. (This reduction applies to tables in paragraphs (d)(1)(i) and (d)(1)(ii) of this section.)

(2) *Income.* Only stable and reliable income of the veteran and spouse can be considered in determining ability to meet mortgage payments. Income can be considered stable and reliable if it can be concluded that it will continue during the foreseeable future.

(i) *Verification.* Income of the borrower and spouse which is derived from employment and which is considered in determining the family's ability to meet the mortgage payments, payments on debts and other obligations, and other expenses, must be verified if the spouse is employed and will be contractually obligated on the loan, the combined income of both the veteran and spouse is considered when the income of the veteran alone is not sufficient to qualify for the amount of the loan sought. In other than community property States, if the spouse will not be contractually obligated on the loan, Regulation B, promulgated by the Federal Reserve Board pursuant to the Equal Credit Opportunity Act prohibits any request for, or consideration of information concerning the spouse (including income, employment, assets, or liabilities), except that if the applicant is relying on alimony, child support, or maintenance payments from a spouse or former spouse as a basis for repayment of the loan, information concerning such spouse or former spouse may be requested and considered (see paragraph (d)(3)(iii) of this section). In community property States, information concerning a spouse may be requested and considered in the same manner as that for the applicant. The standards applied to income of the veteran are also applicable to that of the spouse. There can be no discounting of income on account of sex, marital status, or any other basis prohibited by the Equal Credit Opportunity Act. Income claimed by an applicant that is not or cannot be verified cannot be given consideration when analyzing the loan. If the veteran or spouse has been employed by a present employer for less than 2 years, a 2-year history covering prior

employment, schooling or other training must be secured. Any periods of unemployment must be explained. Employment verifications must be no more than 90 days old to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the employment verification is within 90 days of the date of the veteran's application to the lender.

(ii) *Income reliability.* Income received by the borrower and spouse is to be used only if it can be concluded that the income will continue during the foreseeable future and thus should be properly considered in determining ability to meet the mortgage payments. There can be no discounting of income solely because it is derived from an annuity, pension or other retirement benefit, or from part-time employment. However, unless income from overtime work and part-time or second jobs can be accorded a reasonable likelihood that it is continuous and will continue in the foreseeable future, such income should not be used. The hours of duty and other work conditions of the applicant's primary job, and the period of time in which the applicant was employed under such arrangement must be such as to permit a clear conclusion as to a good probability that overtime or part-time or secondary employment can and will continue. Income from overtime work and part-time jobs not eligible for inclusion as primary income, may, if properly verified, be used to offset the payments due on debts and obligations of a relatively short term. Such income must be described in the loan file. The amount of any pension or compensation and other income such as dividends from stocks, interest from bonds, savings accounts, or other deposits, rents, royalties, etc., will be used as primary income if it is reasonable to conclude that such income will continue in the foreseeable future. Otherwise, it may be used only to offset short-term debts, as above. Certain military allowances, as to which likely duration cannot be determined, will also be used only to offset short-term obligations. Such allowances are: pro-pay, flight or hazard pay, and overseas or combat pay, all of which are subject to periodic review and/or testing of the recipient to ascertain whether eligibility for such pay will continue. Only if it can be shown that such pay has continued for a prolonged period and can be expected to continue because of the nature of the recipient's assigned duties, will such income be considered as primary income. For instance, flight pay verified for a pilot can be regarded as probably

continuous and thus should be added to the base pay. Income derived from service in the reserves or National Guard may be used if the applicant has served in such capacity for a period of time sufficient to evidence good probability that such income will continue. The total period of active and reserve service may be helpful in this regard. Otherwise, such income may be used to offset short-term debts. There are a number of additional income sources whose contingent nature precludes their being considered as available for repayment of a long-term mortgage obligation. Temporary income items such as VA educational allowances and unemployment compensation do not represent stable and reliable income and will not be taken into consideration in determining the ability of the veteran to meet the income requirement of the governing law. As required by the Equal Opportunity Act Amendments of 1976, Public Law 94-239, income from public assistance programs is used to qualify a loan if it can be determined that the income will probably continue for a substantial fraction of the term of the loan; i.e., one-third or more. For instance, aid to dependent children being received for a 5-year old child that will continue until the child achieves majority would be used to qualify for a 30-year loan.

(iii) *Alimony, child support, maintenance payments.* If an applicant chooses to reveal income from alimony, child support, or maintenance payments (after first having been informed that any such disclosure is voluntary pursuant to the Federal Reserve Board's Regulation B) such payments are considered as income to the extent that the payments are likely to be consistently made. Factors to be considered in determining the likelihood of consistent payments include, but are not limited to: Whether the payments are received pursuant to a written agreement or court decree; the length of time the payments have been received; the regularity of receipt; the availability of procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when available under the Fair Credit Reporting Act or other applicable laws. However, the Fair Credit Reporting Act (15 U.S.C. 1681b) limits the permissible purposes for which credit reports may be ordered, in the absence of written instructions of the consumer to whom the report relates, to business transactions involving the subject of the credit report or extensions of credit to the subject of the credit report.

(iv) *Military quarters allowance.* With respect to off-base housing (quarters) allowances for service personnel on active duty, it is the policy of the Department of Defense (DoD) to utilize available on-base housing when possible. In order for a quarters allowance to be considered as continuing income, it is necessary that the applicant furnish written authorization from his or her commanding officer for off-base housing. This authorization should verify that quarters will not be made available and that the individual should make permanent arrangements for nonmilitary housing. DD Form 1747, Status of Housing Availability, is used by the Family Housing Office to advise personnel regarding family housing. Unless conditions of item e or f of DD Form 1747 apply, the applicant's quarters allowance cannot be considered. Of course, if the applicant's income less quarters allowance is sufficient, there is no need for assurance that the applicant has permission to occupy nonmilitary housing provided that a determination can be made that the occupancy requirements of the law will be met. Also, authorization to obtain off-base housing will not be required when certain duty assignments would clearly qualify service personnel with families for quarters allowance. For instance, off-base housing authorizations need not be obtained for service personnel stationed overseas who are not accompanied by their families, recruiters on detached duty, or military personnel stationed in areas where no on-base housing exists. In any case in which no off-base housing authorization is obtained, an explanation of the circumstances justifying its omission must be included with the loan application except when it has been established by the VA facility of jurisdiction that the waiting lists for off-base housing are so long that it is improbable that individuals desiring to purchase off-base housing would be precluded from doing so in the foreseeable future. If stations make such a determination, a release shall be issued to inform lenders.

(v) *Commissions.* When all or a major portion of the veteran's income is derived from commissions, it will be necessary to establish the stability of such income if it is to be considered in the loan analysis for the repayment of the mortgage debt and/or short-term obligations. In order to assess the value of such income, lenders should obtain written verification of the actual amount of commissions paid to date, the basis for the payment of such commissions

and when commissions are paid; i.e., monthly, quarterly, semiannually, or annually. The length of the veteran's employment in this type of occupation is also an important factor in the assessment of the stability of the income. If the veteran has been employed for a relatively short time, the income should not normally be considered stable unless the product or service was the same or closely related to the product or service sold in an immediate prior position.

(vi) *Self-employment.* When a self-employed applicant has been in the business a relatively short period of time (i.e., less than 2 years), sufficient information must be obtained to ascertain that the applicant has the training, experience and other qualifications necessary to be successful in the enterprise. For any self-employed person, verification of the amount of income is accomplished by obtaining a profit and loss statement for the prior fiscal year (12-month accounting cycle), plus the period year to date since the end of the last fiscal year (or for whatever shorter period records may be available), and a current balance sheet showing all assets and liabilities. The profit and loss statement and balance sheet will be prepared by an accountant based on the financial records. In some cases the nature of the business or the content of the financial statement may necessitate an independent audit certified as accurate by the accountant. Depending on the situation, this data may be on the veteran and/or the business. When it is otherwise not possible to determine a self-employed applicant's qualification from an income standpoint, the applicant may wish to voluntarily offer to submit copies of complete income tax returns, including all schedules for the past 2 years, or for whatever additional period is deemed necessary to properly demonstrate a satisfactory earning record. Depreciation claimed as a deduction on the tax return or financial record of the business may be added in as net income. If the business is a corporation or partnership, a list of all stockholders or partners showing the interest each holds in the business will be required. Some cases may justify a written credit report on the business as well as the applicant. When the business is of an unusual type and it is difficult to determine the probability of its continued operation, explanations as to the function and purpose of the business may be needed from the applicant and/or any other qualified party with the acknowledged expertise to express a valid opinion.

(vii) *Recently discharged veterans.* Loan applications received from recently discharged veterans who have little or no employment experience other than their military occupation and from veterans seeking VA guaranteed loans who have retired after 20 years of active military duty require special attention. The retirement income of the latter veterans in many cases may not be sufficient to meet the statutory income requirements for the loan amount sought. Many have obtained full-time employment and have been employed in their new jobs for a very short time.

(A) It is essential in determining whether veterans in these categories qualify from the income standpoint for the amount of the loan sought, that the facts in respect to their present employment and retirement income be fully developed, and that each case be considered on its individual merits.

(B) In most cases the veteran's current income or current income plus his or her retirement income is sufficient. The problem lies in determining whether it can be properly concluded that such income level will continue for the foreseeable future. If the veteran's employment status is that of a trainee or apprentice, this will, of course, be a factor. In cases of the self-employed, the question to be resolved is whether there are reasonable prospects that the business enterprise will be successful and produce the required income. Unless a favorable conclusion can be made, the income from such source should not be considered in the loan analysis.

(C) If a recently discharged veteran has no prior employment history and the veteran's verification of employment shows he or she has not been on the job a sufficient time in which to become established, consideration should be given to the duties the veteran performed in the military service. When it can be determined that the duties a veteran performed in the service are similar or are in direct relation to the duties of the applicant's present position, such duties may be construed as adding weight to his or her present employment experience and the income from the veteran's present employment thus may be considered available for qualifying the loan, notwithstanding the fact that the applicant has been on the present job only a short time. This same principle may be applied to veterans recently retired from the service. In addition, when the veteran's income from retirement, in relation to the total of the estimated shelter expense, long-term debts and amount available for family support, is such that only minimal

income from employment is necessary to qualify from the income standpoint, it would be proper to resolve the doubt in favor of the veteran. It would be erroneous, however, to give consideration to a veteran's income from employment for a short duration in a job requiring skills for which the applicant has had no training or experience.

(D) To illustrate the foregoing, it would be proper to use short-term employment income in qualifying a veteran who had experience as an airplane mechanic in the military service and the individual's employment after discharge or retirement from the service is in the same or allied fields; e.g., auto mechanic or machinist. This presumes, however, that the verification of employment included a statement that the veteran was performing the duties of the job satisfactorily, the possibility of continued employment was favorable and that the loan application is eligible in all other respects. An example of nonqualifying experience is that of a veteran who was an Air Force pilot and has been employed in insurance sales on commission for a short time. Most cases, of course, fall somewhere between those extremes. It is for this reason that the facts of each case must be fully developed prior to closing the loan automatically or submitting the case to VA for prior approval.

(viii) *Employment of short duration.* The provisions of paragraph (d)(2)(vii) of this section are similarly applicable to applicants whose employment is of short duration. Such cases will entail careful consideration of the employer's confirmation of employment, probability of permanency, past employment record, the applicant's qualifications for the position, and previous training, including that received in the military service. In the event that such considerations do not enable a determination that the income from the veteran's current position has a reasonable likelihood of continuance, such income should not be considered in the analysis. Applications received from persons employed in the building trades, or in other occupations affected by climatic conditions, should be supported by documentation evidencing the applicant's total earnings to date and covering a period of not less than 1 year. If the applicant works out of a union, evidence of the previous year's earnings should be obtained together with a verification of employment from the current employer.

(ix) *Rental-income.*

(A) *Multi-unit Subject Property.* When the loan pertains to a structure with more than a one-family dwelling unit, the prospective rental income will not be considered unless the veteran can demonstrate a reasonable likelihood of success as a landlord, and sufficient cash reserves are verified to enable the veteran to carry the mortgage loan payments (principal, interest, taxes, and insurance) without assistance from the rental income for a period of at least 6 months. The determination of the veteran's likelihood of success as a landlord will be based on documentation of any prior experience in managing rental units, or other collection activities. The amount of rental income to be used in the loan analysis will be based on the prior rental history of the units as verified by the seller's financial records (e.g., prior years' tax returns) for existing structures or, for proposed construction, the appraiser's opinion of the property's fair monthly rental. Adjustments will be applied to reduce estimated gross rental income by proper allowances for operating expenses and vacancy losses.

(B) *Rental of Existing Home.* Proposed rental of a veteran's existing property may be used to offset the mortgage payment on that property, provided there is no indication that the property will be difficult to rent. If available, a copy of the rental agreement should be obtained. It is the responsibility of the loan underwriter to be aware of the condition of the local rental market. For instance, in areas where the rental market is very strong the absence of a lease should not automatically prohibit the offset of the mortgage by the proposed rental income.

(C) *Other Rental Property.* If income from rental property will be used to qualify for the new loan, the documentation required of a self-employed applicant should be obtained together with evidence of cash reserves equaling 3 months PITI on the rental property. As for any self-employed earnings (see paragraph (d)(3)(vi) of this section), depreciation claimed may be added back in as income. In the case of a veteran who has no experience as a landlord, it is unlikely that the income from a rental property may be used to qualify for the new loan.

(x) *Taxes and other deductions.* Deductions to be applied for Federal income taxes and Social Security may be obtained from the Employer's Tax Guide (Circular E) issued by the Internal Revenue Service (IRS). (For veterans receiving a mortgage credit certificate (MCC), see paragraph (d)(3)(xi) of this section.) Any State or local taxes should

be estimated or obtained from charts similar to those provided by IRS which may be available in those States with withholding taxes. A determination of the amount paid or withheld for retirement purposes should be made and used when calculating deductions from gross income. In determining whether a veteran-applicant meets the income criteria for a loan, some consideration may be given to the potential tax benefits the veteran will realize if the loan is approved. This can be done by using the instructions and worksheet portion of IRS Form W-4, Employee's Withholding Allowance Certificate, to compute the total number of permissible withholding allowances. That number can then be used when referring to IRS Circular E and any appropriate similar State withholding charts to arrive at the amount of Federal and State income tax to be deducted from gross income.

(xi) *Mortgage credit certificates.*

(A) The Internal Revenue Code, as amended by the Tax Reform Act of 1984, allows States and other political subdivisions to trade in all or part of their authority to issue mortgage revenue bonds for authority to issue MCCs. Veterans who are recipients of MCC's may realize a significant reduction in their income tax liability by receiving a Federal tax credit for a percentage of their mortgage interest payment on debt incurred on or after January 1, 1985.

(B) Lenders must provide a copy of the MCC to VA with the home loan application. The MCC will specify the rate of credit allowed and the amount of certified indebtedness; i.e., the indebtedness incurred by the veteran to acquire a principal residence or as a qualified home improvement or rehabilitation loan.

(C) For credit underwriting purposes, the amount of tax credit allowed to a veteran under an MCC will be treated as a reduction in the monthly Federal income tax. For example, a veteran having a \$600 monthly interest payment and an MCC providing a 30-percent tax credit would receive a \$180 ($30\% \times \600) tax credit each month. However, because the annual tax credit, which amounts to \$2,160 ($12 \times \180), exceeds \$2,000 and is based on a 30-percent credit rate, the maximum tax credit the veteran can receive is limited to \$2,000 per year (Pub. L. 98-369) or \$167 per month ($\$2,000 \div 12$). As a consequence of the tax credit, the interest on which a deduction can be taken will be reduced by the amount of the tax credit to \$433 ($\$600 - \167). This reduction should also be reflected when calculating Federal income tax.

(D) For underwriting purposes, the amount of the tax credit is limited to the amount of the veteran's maximum tax liability. If, in the above example, the veteran's tax liability for the year were only \$1,500, the monthly tax credit would be limited to \$125 ($\$1,500 \div 12$).

(e) *Credit.* The conclusion reached as to whether or not the borrower and spouse are satisfactory credit risks must also be based on a careful analysis of the available credit data. Regulation B (Equal Credit Opportunity Act) requires that lenders include, in evaluating creditworthiness on a veteran's request, the credit history, when available, of any account reported in the name of the veteran's spouse or former spouse which the veteran can demonstrate reflects accurately the veteran's willingness or ability to repay.

(1) *Adverse data.* If the analysis develops any derogatory credit information and, despite such facts, it is determined that the borrower and spouse are satisfactory credit risks, the basis for the decision must be explained. If a borrower and spouse have debts outstanding which have not been paid timely, or which they have refused to pay, the fact that the outstanding debts are paid after the acceptability of the credit is questioned or in anticipation of applying for new credit does not, of course, alter the fact that the record for paying debts has been unsatisfactory. With respect to unpaid debts, lenders may take into consideration a veteran's claim of bona fide or legal defenses. This is not applicable when the debt has been reduced to judgment.

(2) *Prior VA loans.* When the veteran's certificate of eligibility, or loan application, or other information available to the lender indicates use of VA guaranteed loan entitlement in connection with a prior loan, the lender to which the veteran is currently applying for an additional loan is on notice that VA loan experience with the applicant is an element to be considered. Such experience, especially if it is recent, may be so unfavorable that further credit is not warranted. Since credit experience with veterans' guaranteed or insured loans may not be reported by lenders to credit agencies, credit reports obtained in connection with the evaluation of a subsequent loan may be deficient to that extent. Therefore, lenders processing loans on an automatic basis should develop evidence through the originator or holder of the previous loan(s) on the status and experience of such loan(s). If information cannot be obtained, lenders may contact the VA regional office through which the loan(s) was obtained.

Failure to do so will subject the lender to the risk of a possible determination by VA that when all the facts and circumstances that were readily available are considered, the conclusion of the lender relative to compliance with 38 U.S.C. 1810(b)(3) ought not be recognized as reasonable and proper and that the loan should be considered ineligible for guaranty.

(3) *Bankruptcy.* When the credit information shows that the borrower or spouse has been discharged in bankruptcy under the "straight" liquidation and discharge provisions of the bankruptcy law, this would not in itself disqualify the loan. However, in such cases it is necessary to develop complete information as to the facts and circumstances concerning the bankruptcy. Generally speaking, when the borrower or spouse, as the case may be, has been regularly employed (not self-employed) and has been discharged in bankruptcy within the last 2 or 3 years, it probably would not be possible to determine that the borrower or spouse is a satisfactory credit risk unless both of the following requirements are satisfied:

(i) The borrower or spouse has obtained consumer items on credit subsequent to the bankruptcy and has met the payments on these obligations in a satisfactory manner over a continued period, and

(ii) The bankruptcy was caused by circumstances beyond control of the borrower or spouse, e.g., unemployment, prolonged strikes, medical bills not covered by insurance. The circumstances alleged must be verified. If a borrower or spouse is self-employed, has been adjudicated bankrupt, and subsequently obtains a permanent position, a finding as to satisfactory credit risks may be made provided there is no derogatory credit information prior to self-employment, there is no evidence of derogatory credit information subsequent to the bankruptcy, and the failure of the business was not due to misconduct. A bankruptcy discharged more than 5 years ago may be disregarded. A bankruptcy discharged between 3 and 5 years ago may be given some consideration, depending upon the circumstances of the bankruptcy, and submission of evidence that the veteran has been paying his or her obligations in a timely manner.

(4) *Petition under Chapter 13 of Bankruptcy Law.* A wage earner's petition under chapter 13 of the Bankruptcy Law filed by the borrower or spouse is indicative of an effort to pay their creditors. Some plans may provide for full payment of debts while others arrange for payment of scaled

down debts. Regular payments are made to a court-appointed trustee over a 2- to 3-year period (or up to 5 years in some cases). When the borrowers have made all payments in a satisfactory manner, they may be considered as having reestablished satisfactory credit. When they apply for a home loan before completion of the payout period, favorable consideration may nevertheless be given if at least three-fourths of the payments have been made satisfactorily and the Trustee or Bankruptcy Judge (Referee) approves of the new credit.

(5) *Absence of credit history.* The fact that recently discharged veterans may have had no opportunity to develop a credit history will not preclude a determination of satisfactory credit. Similarly, other loan applicants may not have established credit histories as a result of a preference for purchasing consumer items with cash rather than credit. There are also cases in which individuals may be genuinely wary of acquiring new obligations following bankruptcy, consumer credit counseling (debt proration), or other disruptive credit occurrence. The absence of the credit history in these cases will not generally be viewed as an adverse factor in credit underwriting. However, before a favorable decision is made for cases involving bankruptcies or other derogatory credit factors, efforts should be made to develop evidence of timely payment of non-installment debts such as rent and utilities. It is anticipated that this special consideration in the absence of a credit history following bankruptcy would be the rare case and generally confined to bankruptcies which occurred over 3 years ago.

(6) *Long-term v. Short-term debts.* All known debts and obligations including any alimony and/or child support payments of the borrower and spouse must be documented. Significant liabilities, to be deducted from the total income in determining ability to meet the mortgage payments are accounts that, generally, are of a relatively long-term; i.e., 6 months or over. Other accounts for terms of less than 6 months must, of course, be considered in determining ability to meet family expenses. Certainly any account with less than 6 months' duration which requires payments so large as to cause a severe impact on the family's resources for any period of time must be considered in the loan analysis. For example, monthly payments of \$100 on an auto loan with a remaining balance of \$500 would be included in those obligations to be deducted from the total income regardless of the fact that the account can be expected to pay out in 5

months. It is clear that the applicant will, in this case, continue to carry the burden of those \$100 payments for the first, most critical, months of the home loan. Similarly, when the credit information shows open accounts of several years' duration which are clearly of a revolving or open-end type, the regular monthly payment for such accounts should be considered as a long-term obligation to be deducted from income.

(7) *Requirements for verification.* If the credit investigation reveals debts or obligations of a material nature which were not divulged by the applicant, lenders must be certain to obtain clarification as to the status of such debts from the borrower. A proper analysis is obviously not possible unless there is total correlation between the obligations claimed by the borrower and those revealed by a credit report or deposit verification. Conversely, significant debts and obligations reported by the borrower must be rated. If the credit report fails to provide necessary information on such accounts, lenders will be expected to obtain their own verifications of those debts directly from the creditors. Credit reports and verifications must be no more than 90 days old to be considered valid. For loans closed automatically, this requirement will be considered satisfied if the date of the credit report or verification is within 90 days of the date of the veteran's application to the lender. Of major significance are the applicant's rental history and outstanding or recently retired mortgages, if any, and lenders should be sure ratings on such accounts are obtained. A determination is necessary as to whether alimony and/or child support payments are required. Verification of the amount of such obligations should be obtained, although documentation concerning an applicant's divorce should not be obtained automatically unless it is necessary to verify the amount of any alimony or child support liability indicated by the applicant. If in the routine course of processing the loan application, however, direct evidence is received (e.g., from the credit report) that an obligation to pay alimony or child support exists (as opposed to mere evidence that the veteran was previously divorced), the discrepancy between the loan application and credit report can and should be fully resolved in the same manner as any other such discrepancy would be handled.

(8) *Job-related expenses.* Known job-related expenses should be documented. This will include costs for any

dependent care, union dues, significant commuting costs, etc. When a family's circumstances are such that dependent care arrangements would probably be necessary, it is important to determine the cost of such services in order to arrive at an accurate total of deductions.

(9) *Credit reports.* Credit reports obtained by lenders on VA guaranteed loan applications must be in conformance with the Residential Mortgage Credit Report Standards formulated jointly by the Department of Veterans Affairs, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration, Farmers Home Administration, credit repositories, repository affiliated consumer reporting agencies and independent consumer reporting agencies. The Residential Mortgage Credit Report is a detailed account of the credit, employment, and residence history as well as public records information concerning an individual. From time to time the Secretary as well as the entities listed above will provide the names of the national organizations that provide credit reports meeting the requirements of the Residential Mortgage Credit Report Standards. The names of such organizations are available through VA and other participating entities. All credit reports obtained by the lender must be submitted to VA.

(f) *Borrower's personal and financial status.* The number and ages of dependents have an important bearing on whether income after deduction of fixed charges is sufficient to support the family. Type and duration of employment of both the borrower and spouse are important as an indication of stability of their employment. The amount of liquid assets owned by the borrower or spouse, or both, is an important factor in determining that they have sufficient funds to close the loan, as well as being significant in analyzing the overall qualifications for the loan. (It is imperative that adequate cash assets from the veteran's own resources are verified to allow the payment of any difference between the sales price of the property and the loan amount, in addition to that necessary to cover closing costs, if the sales price exceeds the reasonable value established by VA (38 CFR 36.4336(a)(3)). Verifications must be no more than 90 days old to be considered valid. For loans closed on the automatic basis, this requirement will be considered satisfied if the date of the deposit verification is within 90 days of the date of the veteran's application to the lender. Current monthly rental or

other housing expense is an important consideration when compared to that to be undertaken in connection with the contemplated housing purchase.

(g) *Estimated monthly shelter expenses.* It is important that monthly expenses such as taxes, insurance, assessments and maintenance and utilities be estimated accurately based on property location and type of house; e.g., old or new, large or small, rather than using or applying a "rule of thumb" to all properties alike. Maintenance and utility amounts for various types of property should be realistically estimated. Local utility companies should be consulted for current rates. The age and type of construction of a house may well affect these expenses. In the case of condominiums or houses in a planned unit development (PUD), the monthly amount of the maintenance assessment payable to a homeowners association should be added. If the amount currently assessed is less than the maximum provided in the covenants or master deed, and it appears likely that the amount will be insufficient for operation of the condominium or PUD, the amount used will be the maximum the veteran could be charged. If it is expected that real estate taxes will be raised, or if any special assessments are expected, the increased or additional amounts should be used. In special flood hazard areas, include the premium for any required flood insurance.

(h) *Lender responsibility.* (1) Lenders are fully responsible for developing all credit information; i.e., for obtaining verifications of employment and deposit, credit reports, and for the accuracy of the information contained in the loan application.

(2) Verifications of employment and deposits, and requests for credit reports and/or credit information must be initiated and received by the lender.

(3) In cases where the real estate broker/agent, or any other party requests any of this information, the report(s) must be returned directly to the lender. This fact must be disclosed by appropriately completing the required certification on the loan application or report and the parties must be identified as agents of the lender.

(4) Where the lender relies on other parties to secure any of the credit or employment information or otherwise accepts such information obtained by any other party such parties shall be construed for purposes of the submission of the loan documents to VA to be authorized agents of the lender, regardless of the actual relationship between such parties and the lender, even if disclosure is not provided to VA

under paragraph (h)(3) of this section. Any negligent or willful misrepresentation by such parties shall be imputed to the lender as if the lender had processed those documents and the lender shall remain responsible for the quality and accuracy of the information provided to VA.

(5) All credit reports secured by the lender or other parties as identified in paragraphs (h)(3) and (h)(4) of this section shall be provided to VA. If updated credit reports reflect materially different information than that in other reports such discrepancies must be explained by the lender and the ultimate decision as to the effects of the discrepancy upon the loan application fully addressed by the underwriter.

(6) Lenders originating loans are responsible for determining and certifying to VA on the appropriate application or closing form that the loan meets all statutory and regulatory requirements. Lenders will affirmatively certify that loans were made in full compliance with the law and loan guaranty regulations as prescribed in these regulations.

(i) *Definitions.* (1) The definitions contained in part 42 of this chapter are applicable in this section.

(2) *Another Appropriate Amount.* In determining the appropriate amount of a lender's civil penalty in cases where the Secretary has not sustained a loss or where two times the amount of the Secretary's loss on the loan involved does not exceed \$10,000, the Secretary shall consider:

(i) The materiality and importance of the false certification to the determination to issue the guaranty, or to approve the assumption;

(ii) The frequency and past pattern of such false certifications by the lender; and,

(iii) Any exculpatory or mitigating circumstances.

(3) *Complaint* includes the assessment of liability served pursuant to this subsection.

(4) *Defendant* means a lender named in the complaint.

(5) *Lender* includes the holder approving loan assumptions pursuant to 38 U.S.C. 1814.

(j) *Procedures for certification.* (1) As a condition to VA issuance of a loan guaranty on all loans closed on or after the effective date of these regulations, and as a prerequisite to an effective loan assumption on all loans assumed pursuant to 38 U.S.C. 1814 on or after the effective date of these regulations, the following certification shall accompany each loan closing or assumption package:

"The undersigned lender certifies that the (loan) (assumption) application, all verifications of employment, deposit, and other income and credit verification documents have been processed in compliance with 38 CFR part 36; that all credit reports obtained or generated in connection with the processing of this borrower's (loan) (assumption) application have been provided to VA; that, to the best of the undersigned lender's knowledge and belief the (loan) (assumption) meets the underwriting standards recited in 38 U.S.C. chapter 37 and 38 CFR part 36; and that all information provided in support of this (loan) (assumption) is true, complete and accurate to the best of the undersigned lender's knowledge and belief."

(2) The certification shall be executed by an officer of the lender authorized to execute documents and act on behalf of the lender.

(3) Any lender who knowingly and willfully makes a false certification required pursuant to § 36.4337(j)(1) shall be liable to the United States Government for a civil penalty equal to two times the amount of the Secretary's loss on the loan involved or to another appropriate amount, not to exceed \$10,000, whichever is greater.

(k) *Assessment of liability.* (1) Upon an assessment confirmed by the Chief Benefits Director, in consultation with the Investigating Official, that a certification, as required in this section, is false, a report of findings of the Chief Benefits Director shall be submitted to the Reviewing Official setting forth:

(i) The evidence that supports the allegations of a false certification and of liability;

(ii) A description of the claims or statements upon which the allegations of liability are based;

(iii) The amount of the VA demand to be made; and,

(iv) Any exculpatory or mitigating circumstances that may relate to the certification.

(2) The Reviewing Official shall review all of the information provided and will either inform the Chief Benefits Director and the Investigating Official that there is not adequate evidence, that the lender is liable, or serve a complaint on the lender stating:

(i) The allegations of a false certification and of liability;

(ii) The amount being assessed by the Secretary and the basis for the amount assessed;

(iii) Instructions on how to satisfy the assessment and how to file an answer to request a hearing, including a specific statement of the lender's right to request a hearing by filing an answer and to be represented by counsel; and

(iv) That failure to file an answer within 30 days of the complaint will

result in the imposition of the assessment without right to appeal the assessment to the Secretary.

(l) *Hearing procedures.* A lender hearing on an assessment established pursuant to this section shall be governed by the procedures recited at 38 CFR 42.8 through 42.47.

(m) *Additional remedies.* Any assessment under this section may be in addition to other remedies available to VA, such as debarment and suspension pursuant to 38 U.S.C. 1804 and part 44 of this chapter or loss of automatic processing authority pursuant to 38 U.S.C. 1802, or other actions by the Government under any other law including but not limited to title 18, U.S.C. and 31 U.S.C. 3732.

(Authority: 38 U.S.C. 1810).

(Information collection requirements contained in § 36.4337 were approved by the Office of Management and Budget under control number 2900-0521.)

4. In § 36.4402, the introductory text of paragraph (b) is revised to read as follows:

§ 36.4402 Eligibility.

(b) *Eligibility, adaptations grants.* No beneficiary shall be eligible for assistance under section 801(b) of chapter 21, for the cost of reasonably necessary adaptations to an existing structure or for the inclusion of such adaptations in proposed construction or for the purchase of a structure already including such adaptations unless it is determined pursuant to §§ 36.4401 through 36.4410 of this part that:

5. In § 36.4404, paragraph (b)(1) is revised to read as follows:

§ 36.4404 Computation of cost.

(b) ***

(1) The actual cost, or in the case of a veteran acquiring a residence already adapted with special features, the fair market value of the adaptations, including installation costs, determined to be reasonably necessary, or

6. In § 36.4514, paragraph (c) and paragraphs (g)(1) through (g)(3) are revised to read as follows:

§ 36.4514 Eligibility requirements.

(c) The applicant is a satisfactory credit risk and has the ability to repay the obligation proposed to be incurred and that the proposed payments on such obligation bear a proper relationship to present and anticipated income and expenses as determined by use of the credit standards in § 36.4337 of this part.

(Authority: 38 U.S.C. 210(c))

(g) ***

(1) Neither the applicant nor anyone authorized to act for the applicant, will refuse to sell or rent, after the making of a bonafide offer, or refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny the dwelling or property covered by this loan to any person because of race, color, religion, sex, handicap, familial status, or national origin;

(2) The applicant recognizes that any restrictive covenant on the property relating to race, color, religion, sex, handicap, familial status, or national origin is illegal and void and any such covenant is specifically disclaimed; and

(3) The applicant understands that civil action for preventive relief may be brought by the Attorney General of the United States in any appropriate U.S. District Court against any person responsible for a violation of the applicable law.

§ 36.4515 [Amended]

7. In § 36.4515(a) introductory text remove the word "him" where it appears and add, in its place, the words "the veteran".

[FR Doc. 91-5421 Filed 3-7-91; 8:45 am]

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**GENERAL SERVICES
ADMINISTRATION**

41 CFR Part 105-8

**Enforcement of Nondiscrimination on
the Basis of Handicap in Programs or
Activities Conducted by General
Services Administration**

AGENCY: General Services
Administration.

ACTION: Final rule.

SUMMARY: This final regulation requires that the General Services Administration (GSA) operate all of its programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individuals with handicaps and qualified individual with handicaps, and establishes a detailed complaint mechanism for resolving allegations of discrimination against GSA. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap

in programs or activities conducted by Federal Executive agencies.

EFFECTIVE DATE: March 8, 1991.

FOR FURTHER INFORMATION CONTACT: Myrtle K. Cook, Civil Rights Division, General Services Administration, (202) 501-1368 or (202) 501-0702 (TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On March 22, 1989, GSA published a Notice of Proposed Rulemaking (NPRM) for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs and activities conducted by GSA. 54 FR 11750.

By July 20, 1989, close of the comment period, GSA received numerous comments, the majority of which were from organizations representing individuals with handicaps. Each comment was read and analyzed. Decisions that GSA made in response to those comments were not made on the basis of the number of commenters addressing any one point but on a consideration of the merits of the points of view expressed in the comments.

Section 504 requires that regulations that apply to the programs and activities of Federal agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been submitted. GSA will submit this regulation to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and the House Committee on Education and Labor and its Subcommittee on Select Education pursuant to the terms of section 504. The regulation will become effective on March 8, 1991.

This rule applies to all programs and activities conducted by GSA.

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by GSA.

On August 28, 1984, GSA participated in a joint publication of an NPRM issued by twenty-one agencies proposing identical standards and procedures for implementing section 504. (49 FR 34132.) Following the public comment period, however, the agency determined that the rule as proposed would be inadequate for GSA's purposes in light of the agency's unique responsibilities for the buildings in which the Federal Government is housed. On March 22, 1989, GSA published an NPRM, which addressed with specificity the manner in

which GSA would carry out its statutory responsibilities as the Government's "landlord," in order to enhance the abilities of other Federal agencies to offer their programs in a manner accessible to individuals with handicaps. It also outlined proposed procedures for cooperation between GSA and Federal tenant agencies when the accessibility of a Federal agency's programs is affected by the inaccessibility of a building under GSA's control.

As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (sec. 119, Pub. L. 95-602, 92 Stat. 2982), the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810), and Handicapped Programs Technical Amendments Act of 1988 (sec. 206(d) Pub. L. 100-630, 102 Stat. 3312), section 504 of the Rehabilitation Act of 1973 states that:

No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees. (29 U.S.C. 794 (1978 amendment italicized)).

Apart from language tailored to GSA's role as the Federal landlord, the substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. (See 28 CFR part 41 (section 504 coordination regulation for federally assisted programs)). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this rule and the Federal Government's section 504 regulations for federally assisted programs. Many of these changes are based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. See *Dopico v. Goldschmidt*, 687 F. 2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F. 2d 1272 (D.C. Cir. 1981) (APTA); see also *Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority*, 718 F. 2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that reasonable adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretation of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the agency believes that there are no significant differences between this rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3

CFR, 1980 Comp., p. 298) and distributed to Executive agencies. This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

Section-by-Section Analysis

Section 105-8.101 Purpose

Section 105-8.101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 105-8.102 Application

The regulation applies to all programs or activities conducted by GSA. Under this section, a federally conducted program or activity is, in simple terms, anything GSA does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: Those involving general public contact as part of ongoing agency operations and those directly administered by GSA for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the GSA facilities. Activities in the second category include programs that provide Federal services or benefits. This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

Section 105-8.103 Definitions

Assistant Attorney General. "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids. "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy

the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 105-8.160(a)(1), they may also be necessary to meet other requirements of the regulation.

One commenter suggested expanding the definition of "auxiliary aids", renaming "auxiliary aids" to read "aids for reasonable accommodation", and including the services of attendants.

The items set out in the definition are clearly intended as examples, and are not intended to constitute an exhaustive list. Thus the regulation contemplates and, in appropriate cases, requires other auxiliary aids as well. The agency believes that attendant services are generally personal in nature and that they are therefore generally not required. Therefore, there is no need to change the text of the regulation.

Complete Complaint. "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary because the 180 day period for the agency's investigation (see § 105-8.170-7) begins when the agency receives a complete complaint.

Facility. The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs (28 CFR 41.3(f)) except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by GSA regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by GSA. The term "facility" is used in §§ 105-8.149, 105-8.150, and 105-8.170-5.

Historic preservation programs, Historic properties, and Substantial impairment. These terms are defined in order to aid in the interpretation of §§ 105-8.150-1(b) and 105-8.150-2(b), which relate to accessibility of historic preservation programs.

Individual with handicaps. The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no

substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

Qualified individual with handicaps. The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

The first paragraph of the definition deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. Section 105-8.154 Program accessibility: Exceptions specifies the steps to be taken before a final determination is made as to whether a proposed action would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. The definition reflects the decision of the Supreme Court in *Davis*. In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It, therefore, concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be

able to participate in the program offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered, not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in § 105-8.154 and § 105-8.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under the first paragraph, the second paragraph adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

The third paragraph explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this subpart by § 105-8.140. Nothing in this subpart changes

existing regulations applicable to employment.

Two commenters suggested that the fundamental alteration portion of § 105-8.103 Definitions—"Qualified individual with handicaps," should reference § 105-8.154. This point has been adequately addressed in the preamble.

Section 504. This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 105-8.110 Self-evaluation

The agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Section 105-8.111 Notice

Section 105-8.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

One commenter proposed the inclusion of provisions for assurances, transition plans and specific modification requirements. Federal agencies generally require that their recipients sign assurances that they will not discriminate in their programs receiving assistance. Because there are not two entities involved here (e.g., a Federal agency and a recipient) but only one (Federal agency), assurances are not appropriate. Provisions for transition plans and modifications are addressed in §§ 105-8.110 and 105-8.150-4.

Section 105-8.130 General Prohibitions Against Discrimination

Section 105-8.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph 105-8.130(a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 105-8.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 105-8.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph 105-8.130(b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (e.g., epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in only one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph 105-8.130(b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 105-8.149 to 105-8.151) and

communications (§ 105-8.160) are specific applications of this principle.

Despite the mandate of subsection 105-8.130(d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, § 105-8.130(b)(1)(iv), in conjunction with § 105-8.130(d) permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities.

Paragraph 105-8.130(b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, § 105-8.130(b)(2) provides that qualified individuals with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph 105-8.130(b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph 105-8.130(b)(1)(vi) prohibits the agency from limiting a qualified individual with handicaps the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service. Paragraph 105-8.130(b)(3) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph 105-8.130(b)(4) specifically applies the prohibition enunciated in § 105-8.130(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the agency. Paragraph 105-8.130(b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph 105-8.130(b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals

with handicaps to discrimination on the basis of handicap.

Paragraph 105-8.130(b)(6) prohibits the agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certification. A person is a "qualified individual with handicaps" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 105-8.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case, the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph 105-8.130(b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect the content of the rules established by the agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

One commenter suggested that paragraph 105-8.130(b)(6) extend to the programs or activities of licensees or certified entities. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities. We believe that extending section 504 to licensees or certified entities is not appropriate and, therefore, this suggestion is not adopted.

Paragraph 105-8.130(c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph 105-8.130(d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals

with handicaps, i.e., in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

One commenter objected to the omission of a paragraph from the regulations for federally assisted programs that prohibits a recipient from providing significant assistance to an organization that discriminates. The suggested language in effect states that agencies may not "aid or perpetuate discrimination" against qualified individuals with handicaps by providing significant assistance to an agency, organization or person that discriminates on the basis of handicap. Assistance from the agency that would provide significant support to an organization constitutes Federal financial assistance and the organization, as a recipient of such assistance, would be covered by the agency's section 504 regulation for federally assisted programs. Therefore, the "significant assistance" provision would be inappropriate in a regulation applying only to federally conducted programs or activities.

Section 105-8.140 Employment

Section 105-8.140 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner v. Morris*, 752 F. 2d 1271, 1277 (8th Cir. 1985); *Smith v. United States Postal Service*, 742 F. 2d 257, 259-260 (6th Cir. 1984); *Prewitt v. United States Postal Service*, 662 F. 2d 292, 302-04 (5th Cir. 1981). *Contra McGuinness v. United States Postal Service*, 744 F. 2d 1318, 1320-21 (7th Cir. 1984); *Boyd v. United States Postal Service*, 752 F. 2d 410, 413-14 (9th Cir. 1985).

Courts uniformly have held that, in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F. 2d at 262; *Prewitt*, 662 F. 2d at 304. Accordingly, § 105-8.140 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC

establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § 105-8.170(2) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section 105-8.148 Consultation With the Architectural and Transportation Barriers Compliance Board

Section 105-8.148 provides that GSA must consult with the Architectural and Transportation Barriers Compliance Board (ATBCB) in carrying out GSA's responsibilities under this subpart as they relate to architectural barriers in GSA controlled facilities that house Federal agencies.

Section 105-8.149 Program Accessibility: Discrimination Prohibited

Section 105-8.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 105-8.150 and 105-8.151.

Section 105-8.150 Program Accessibility: Existing Facilities

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Section 105-8.150 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 105-8.150-1(a)).

Paragraph (b), which establishes a special limitation on the obligation to ensure program accessibility in historic preservation programs, is discussed below in connection with paragraph 105-8.150-2(b).

Paragraph 105-8.150-2(a) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as

removal of or alterations to a load-bearing structural member.) The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraph 105-8.150-1(b) provides an additional limitation on the obligation to ensure program accessibility that is applicable only to historic preservation programs. In order to avoid possible conflict between the congressional mandates to preserve historic properties on the one hand and to eliminate discrimination against individuals with handicaps on the other, § 105-8.150-1(b) provides that in historic preservation programs the agency is not required to take any action that would result in a substantial impairment of significant historic features of a historic property.

Nevertheless, because the primary benefit of a historic preservation program is uniquely the experience of the historic property itself, § 105-8.150-2(b) requires the agency to give priority to methods of providing program accessibility that permit individuals with handicaps to have physical access to the historic property. This priority on physical access may also be viewed as a specific application of the general requirement that the agency administers programs in the most integrated setting appropriate to the needs of qualified individuals with handicaps (§ 105-8.130(d)). Only when providing physical access would result in a substantial impairment of significant historic features, in a fundamental alteration in the nature of the program, or in undue financial and administrative burdens, may the agency adopt alternative methods for providing program accessibility that do not ensure physical access. Examples of some alternative methods are provided in § 105-8.150-2(b).

The special limitation on program accessibility set forth in § 105-8.150-1(b) is applicable only to programs that have preservation of historic properties as a primary purpose (see *supra* discussion of definition of "historic preservation program," § 105-8.103). Narrow application of the special limitation is justified because of the inherent flexibility of the program accessibility requirement. Where historic preservation is not a primary purpose of the program the agency is not bound to a particular facility. It can relocate all or part of its program to an accessible facility, make home visits, or use other standard methods of achieving program accessibility without making structural alterations that might impair significant historic features of the historic property.

Subsection 105-8.150-3 and -4 establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), GSA must make any necessary structural changes in facilities it occupies as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within one year of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 105-8.151 Program Accessibility: New Construction and Alterations

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). Section 105-8.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101-19.600 to 101-19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. However, GSA programs carried out in those buildings are subject to the program accessibility standard for existing facilities in § 105-8.150. To the extent the buildings are newly constructed or altered, that must also meet the new construction and alteration requirements of § 105-8.151. Programs carried out in those buildings by agencies other than GSA are subject to the program accessibility standards in those agencies' regulations.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where

architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings. However, in leasing space, GSA must first attempt to find space that meets all the requirements of the Uniform Federal Accessibility Standards (UFAS). If no such bid is received, other bids may be accepted. GSA's preference is for buildings complying with UFAS.

Two developments have occurred in Federal policy and practice for leasing activities. First, GSA revised its standard leasing solicitation for offers (SFO) to include GSA's preference for leased space complying with UFAS. The SFO is the document that sets forth the Government's leasing requirements and that is used by builders in developing responsive bids. Second, the ATBCB amended in 1988 its minimum guidelines and requirements, which preceded the establishment of UFAS, to establish requirements for standards for buildings leased by the Federal Government [36 CFR 1190.34 (1989)]. The minimum guidelines and requirements apply to leased buildings even if they are not altered. Section 1190.34(a) requires that any building or facility that is to be leased by the Federal Government, without having been designed or constructed in accordance with its specifications, comply with the standards for new construction (§ 1190.31), incorporate the features listed in the standards for alterations (§ 1190.33(c)), or, if no such space is available, be altered to include certain accessible elements and spaces. GSA will revise UFAS to include these leasing provisions.

In *Rose v. United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 105-8.152 Program Accessibility: Assignment of Space.

This section and the next are written especially to address the following major areas: (1) GSA's authorities and

responsibilities for assignment of space (§ 105-8.152); and (2) occupant agencies' transition plans are required by each agency's section 504 regulation (§ 105-8.153). These two sections are intended to deal with the interplay between GSA's responsibilities as the Federal Government's "landlord" and other agencies' section 504 obligations to make programs accessible, as well as with the interaction between GSA and Federal tenant agencies when the accessibility of a Federal agency's programs is affected by the inaccessibility of a building under GSA's control. GSA has unique responsibilities for space owned and leased by the Federal Government, pursuant to the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471 et seq. and various sections of titles 40 and 44 (1982) and the Public Buildings Act of 1959, as amended (40 U.S.C. 601-616 (1982))). For example, GSA has the authority and responsibility to perform centralized property management functions for agencies of the Federal Government. 40 U.S.C. 490. GSA is authorized to alter or otherwise arrange for alterations for occupant agencies on either a no-cost or reimbursable basis. *Id.* at sections 490(j) and 603. GSA also has exclusive statutory authority and responsibility to construct most types of new public buildings. *Id.* at section 601. GSA has interpreted and further defined these duties in its Federal Property Management Regulations, 41 CFR chapter 101, subchapter D (1986).

Section 105-8.152 is intended to ensure that assignment or reassignment of space will not result in one or more of an occupant agency's programs or activities being inaccessible to individuals with handicaps. GSA is responsible to ensure that federally owned space or space leased from nonfederal sources does not make an occupant agency's programs inaccessible. While GSA is ultimately responsible for the accessibility of the space under its control, the nature of program accessibility requires the participation of the occupant agency in decisions affecting its space. Unless the occupant agency analyzes its own programs and determines which facilities must be altered to make its programs accessible to individuals with handicaps, GSA cannot proceed in a cost-effective manner.

Prior to the assignment or reassignment of space to a Federal agency, GSA must consult with the agency to ensure that the assignment or reassignment will not result in one or more of the agency's programs or

activities being inaccessible to individuals with handicaps. If the agency informs GSA that use of the space will result in one or more of the agency's programs being inaccessible, GSA must take one or more of the following actions to make the programs accessible: (1) Arrange for alterations to facilities; (2) locate and provide alternative space that will not result in one or more of the agency's programs being inaccessible; or (3) take any other actions that result in making the agency's programs accessible. Under this proposal, GSA may not require the agency to accept space that results in one or more of the agency's programs being inaccessible.

Section 105-8.154, which contains exceptions to the program accessibility requirements, is applicable to this section.

Section 105-8.153 Program Accessibility: Interagency Cooperation

Over the next several years, Federal agencies are required to evaluate their own programs and develop transition plans when structural changes are necessary to achieve the goal of program accessibility. The agencies generally cannot, however, perform or contract for these changes unless authorized by GSA. In other words, those agencies that are required by their section 504 transition plan to alter GSA-controlled buildings must request that GSA approve these alterations.

Section 105-8.153 establishes a framework for GSA to effectively receive and process agencies' requests for structural changes or other actions under GSA's control. Upon receipt of an agency's transition plan, GSA must assist or advise the requesting agency in providing or arranging for the requested action within the time frames specified in the transition plan.

GSA's role in this area will, however, be more than merely reactive. GSA intends to participate with these Federal agencies in the development of their transition plans. In this capacity GSA can and should call upon its resources to ensure that an agency's decision to request an alteration is well-informed. Even before agency transition plans are completed, GSA expects to conduct a survey of buildings under its control in order to facilitate compliance with § 105-8.153. Further, GSA intends to take the lead in coordinating accessibility issues related to those buildings under GSA control with several Federal agencies as tenants. For example, if two Federal agencies occupying different floors of the same building each request that public

meeting space on their floors be made accessible, GSA should take the lead in determining with the two agencies if their accessibility needs would be met by altering and sharing one room.

Section 105-8.153 provides that GSA, upon request from an occupant agency engaged in the development of a transition plan under section 504, must participate with the occupant agency in the development of the transition plan and provide information and guidance to the occupant agency. Upon request, GSA must conduct space inspections to assist the agency in determining whether a current assignment results in one or more of the occupant agency's programs or activities being inaccessible. (§ 105-8.152(a)).

Subsection 105-8.153-2 establishes procedures for GSA to deal with an occupant agency's request for new space, additional space, relocation to accessible space, alterations, or other actions under GSA's control that are needed to ensure program accessibility in the requesting agency's programs as required by the agency's section 504 transition plan.

Like § 105-8.152, § 105-8.153 covers only those buildings that are under GSA's control. It does not address the situation where GSA has delegated management responsibilities to the sole occupant of a Federal building. Nor does it specify the mechanism by which cost reimbursement between GSA and other Federal agencies will be made. Determinations as to the amount of funds needed for alterations, which agency will obtain the funds, and the time frame within which the funds will be obtained will be made on a case-by-case basis.

Section 105-8.154 Program Accessibility Exceptions

Section 105-8.154 places explicit limits in the agency's obligation to comply with the provisions concerning accessibility to GSA's program, assignment of space to other agencies, and cooperation with other agencies. It generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This section provides that in meeting the program accessibility requirements of §§ 105-8.150, .152, and .153, GSA is not required to take any action that would result in a fundamental alteration in the nature of GSA's program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 105-8.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section

504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. See, e.g., *Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1989); *American Public Transit Association v. Lewis*, (APTA), 655 F.2d 1272 (D.C. Cir. 1981).

Section 105-8.154 and § 105-8.160(d) are also supported by the Supreme Court's Decision in *Alexander v. Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on individuals with handicaps. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on individuals with handicaps but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *id.* at 301, and that "reasonable adjustments in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require "changes," "adjustments," or "modifications" to existing programs that would be "substantial" * * * or that would constitute "fundamental alteration[s] in the nature of a program." *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for an individual with handicaps may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus, failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This section, however, does not establish an absolute defense; it does

not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with §§ 105-8.150, .152, and .153 would in most cases not result in undue financial and administrative burdens on GSA. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with any of these three sections would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with GSA. The decision that compliance would result in such alteration or burdens must be made by the Administrator or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. See § 105-8.154. Any person who believes that he or she or any specific class of persons has been injured by the Responsible Official's decision or failure to make a decision may file a complaint under the compliance procedures established in § 105-8.170.

One commenter suggested that the total resources of the agency should be considered in determining whether or not an accommodation can be made, rather than just the funds "available for use in the funding and operation of the program or activity." Since many of the agency's funds are earmarked for specific purposes and are therefore, unavailable for use elsewhere, the entire agency budget is not an appropriate consideration.

Section 105-8.160 Communications

Section 105-8.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 105-8.160(a) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids

of their choice. This expressed choice shall be given primary consideration by the agency (§ 105-8.160(a)(1)(i)). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 105-8.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble discussion of § 105-8.154). Unless not required by § 105-8.160(d) the agency shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 105-8.154 Program accessibility: Exceptions, regarding the determination of undue financial and administrative burdens, also applies to this section and should be referred to for a complete understanding of the agency's obligation to comply with § 105-8.160.

In some circumstances, a note pad and written materials may be sufficient to permit effective communication with a person with hearing impairments. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the applicant or participant with hearing impairments is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For persons with vision impairments, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall ensure effective communication with persons with vision and hearing impairments involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal

nature (§ 105-8.160(a)(1)(i)). For example, the agency need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph 105-8.160(b) requires the agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph 105-8.160(c) requires the agency to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section 105-8.170 Compliance Procedures

Section 105-8.170 establishes a detailed complaint processing and review procedure for resolving allegations of discrimination in violation of section 504 in GSA's programs or activities. It is based on the Department of Justice's rule for its programs (28 CFR 39.170) and provides an opportunity for a hearing before an administrative law judge.

Subsection 105-8.170-1 specifies that subsections 105-8.170- through .170-13 establish the procedures for processing complaints other than employment complaints. Subsection 105-8.170-2 provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Subsection 105-8.170-3 vests in the Responsible Official the responsibility for the overall management of the section 504 compliance program. "Responsible Official" or "Official," as defined in § 105-8.103, refers to the Director of Civil Rights Division, who is designated as the official responsible for coordinating implementation of compliance procedures set forth in § 105-8.170. The definition of "Official" includes other CSA Officials to whom authority has been delegated by the Official.

Paragraph 105-8.170-4 (a) and (c) provide that any person who believes that he or she has been discriminated against may file a complaint within 180 days from the date of the alleged discrimination. The Official may extend the time limit when the complainant shows goods cause. Good cause could be found if, for example, (1) the complainant mistakenly filed with the wrong agency and was not informed of the mistake within the 180 days; or (2) the complainant could not reasonably

be expected to know of the act or event said to be discriminatory.

Paragraph 105-8.170-4(b) requires that the name and identity of a complainant be held in confidence unless he or she waives that right in writing and except to the extent necessary for compliance purposes.

Complaints may be mailed or delivered to the Administrator, the Responsible Official, or other agency Officials. Complaints received by any agency official other than the Responsible Official must be forwarded immediately to the Responsible Official (paragraph 105-8.170-4(d)).

Subsection 105-8.170-5 requires the agency to send to the Architectural and Transportation Barriers Compliance Board quarterly reports of complaints alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

The Responsible Official is required to accept all complete complaints over which the agency has jurisdiction (§ 105-8.170-6(a)). If the Official determines that the agency does not have jurisdiction over a complaint, the Official shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 105-8.170-6(d)).

If a complaint is not complete when it is filed, the Official must notify the complainant within 30 days that additional information is needed. The complainant must furnish the necessary information within 30 days of receipt of the notice, or the complaint will be dismissed without prejudice. Filing an incomplete complaint within 180 days from the date of the alleged discrimination satisfies the requirement of paragraph 105-8.170-4(c), but the time frames governing the Official's other obligations to process the complaint (*see e.g.*, §§ 105-8.170-7 and 105-8.170-8) do not begin to operate until the Official receives a complete complaint.

Within 180 days of receipt of the complete complaint, the Official is to investigate the complaint, attempt an informal resolution, and, if informal resolution is not achieved, issue a letter of findings (§ 105-8.170-7). Within the time limit, the Official should make every effort to achieve informal resolution whenever possible.

Subsection 105-8.170-8 requires that the Official's letter be sent to the complainant and respondent, and that it contain findings of fact and conclusions of law, the relief granted if

discrimination is found, and notice of the right to appeal. If neither party files an appeal from the letter of findings within 30 days after receipt of the letter, the letter will constitute the final decision of the agency (§ 105-8.170-9).

The regulation provides that a party may appeal the Official's letter of findings to the Special Counsel for Ethics and Civil Rights. Subsection 105-8.170-11 provides an opportunity for a hearing before an administrative law judge (ALJ). The ALJ would make a recommended decision to the Special Counsel for Ethics and Civil Rights, who would make the final agency decision. The purpose of the hearing is to provide a forum in which the complainant or respondent can have an opportunity to be heard, confront witnesses, and present evidence so that an ALJ can issue a recommended decision that is well-reasoned and justified on the basis of the evidence presented.

It would be expected that an opportunity for a hearing before an ALJ would assure more impartiality and the appearance of more impartiality than a decision made by one agency official concerning other officials of the same agency. It would also be expected that agency decisions based on a hearing record would more likely survive later judicial review.

Another person or organization would be allowed to participate as a third party or amicus curias if the ALJ determines that the petitioner has a legitimate interest in the proceedings, that participation will not unduly delay the outcome, and the petitioner's participation may contribute materially to the disposition of the proceedings.

Under subsection 105-8.170-12, the Special Counsel for Ethics and Civil Rights renders a final agency decision after appeal without a hearing or after a hearing. The Special Counsel directs appropriate remedial action if discrimination is found. The Special Counsel's decision will involve reviewing the entire file, including the investigative report, preliminary finding, and, if a hearing was held, the hearing record and recommended decision of the ALJ. If it is the decision of the Special Counsel to reject or modify the recommended decision of the judge, the reasons for the rejection or a modification will be put in writing and made part of the decision (§ 105-8.170-12(a)). The decision shall be made within 60 days of receipt of the complaint file or the hearing record.

One commenter provided four suggestions concerning compliance proceedings. First, the commenter stated that GSA should obtain the expertise of ATBCB to help resolve deficiencies

regarding construction or location of facilities. GSA will solicit the assistance of the ATBCB to resolve deficiencies regarding construction or assist in location of facilities under § 105-8.148. No additional provision is needed.

Second, the commenter urged that a provision should be made for judicial review at the initial complaint level in addition to the one provided at the appeal level. This issue is beyond the scope of this regulation and is for the courts to decide.

Third, the commenter suggested GSA should take actions to ensure that other regulations, forms and directives issued by GSA are superseded by the nondiscrimination requirements of this part. Upon publication of this rule, GSA will do so but a provision in this rule is unnecessary.

Fourth, the commenter suggested the rule should allow for attorney fees during the administrative proceedings and compensation to the prevailing party. Such provisions are statutory and beyond the scope of this regulation and is for the courts to decide.

Section 105-8.171 Complaints Against an Occupant Agency

Section 105-8.171 deals with complaints against an occupant agency alleging that the agency's program is inaccessible because existing facilities under GSA's control contain architectural barriers. In these cases, the occupant agency will likely require assistance from GSA in devising and implementing remedies for violations of section 504 that may be found to exist. The section provides that in such cases GSA and the occupant agency that originally received the complaint are jointly responsible for complaint resolution. In our view, early GSA involvement in the complaint process will result in a more speedy, efficient complaint resolution system. The section makes GSA jointly responsible for complaints only when an occupant agency sends a copy of a complete complaint to GSA. GSA must make reasonable efforts to follow the time frames for complaint resolution that go into effect under the notifying occupant agency's rules when it receives a complete complaint.

List of Subjects in 41 CFR Part 105-8

Administrative practice and procedure, Buildings, Civil rights, Equal employment opportunity, Federal buildings and facilities, Government property management, Handicapped.

For reasons stated in the preamble, chapter 105 of title 41 of the Code of

Federal Regulations is amended as follows:

Part 105-8 is added to read as follows:

PART 105-8—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY GENERAL SERVICES ADMINISTRATION

Sec.

- 105-8.101 Purpose.
- 105-8.102 Application.
- 105-8.103 Definitions.
- 105-8.104—105-8.109 [Reserved]
- 105-8.110 Self-evaluation.
- 105-8.111 Notice.
- 105-8.112—105-8.129 [Reserved]
- 105-8.130 General prohibitions against discrimination.
- 105-8.131—105-8.39 [Reserved]
- 105-8.140 Employment.
- 105-141—105-8.147 [Reserved]
- 105-8.148 Consultation with the Architectural and Transportation Barriers Compliance Board.
- 105-8.149 Program accessibility: Discrimination prohibited.
- 105-8.150 Program accessibility: Existing facilities.
- 105-8.150-1 General.
- 105-8.150-2 Methods.
- 105-8.150-3 Time period for compliance.
- 105-8.150-4 Transition plan.
- 105-8.151 Program accessibility: New construction and alterations.
- 105-8.152 Program accessibility: Assignment of space.
- 105-8.153 Program accessibility: Interagency cooperation.
- 105-8.153-1 General.
- 105-8.153-2 Requests from occupant agencies.
- 105-8.154 Program accessibility: Exceptions.
- 105-8.155—105-8.159 [Reserved]
- 105-8.160 Communications.
- 105-8.161—105-8.169 [Reserved]
- 105-8.170 Compliance procedures.
- 105-8.170-1 Applicability.
- 105-8.170-2 Employment complaints.
- 105-8.170-3 Responsible Official.
- 105-8.170-4 Filing a complaint.
- 105-8.170-5 Notification to the Architectural and Transportation Barriers Compliance Board.
- 105-8.170-6 Acceptance of complaint.
- 105-8.170-7 Investigation/conciliation.
- 105-8.170-8 Letter of findings.
- 105-8.170-9 Filing an appeal.
- 105-8.170-10 Acceptance of appeals.
- 105-8.170-11 Hearing.
- 105-8.170-12 Decision.
- 105-8.170-13 Delegation.
- 105-8.171 Complaints against an occupant agency.

Authority: 29 U.S.C. 794.

§ 105-8.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities

Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 105-8.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 105-8.103 Definitions.

For purposes of this part, the term—
Agency means the General Services Administration (GSA), except when the context indicates otherwise.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of programs or activities conducted by GSA. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic preservation program means programs conducted by the agency that have preservation of historic properties as a primary purpose.

Historic properties means those properties that are listed or eligible for listing in the National Register of

Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "Physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (a) of this definition but is treated by the agency as having such an impairment.

Official or Responsible Official means the Director of the Civil Rights Division of the General Services Administration or his or her designee.

Qualified individual with handicaps means—

(1) With respect to any agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) *Qualified handicapped person* as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 105-8.140.

Respondent means the organizational unit in which a complainant alleges that discrimination occurred.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810); the Civil Rights Restoration Act of 1987 (Pub. L. 100-259, 102 Stat. 28); and Handicapped Program Technical Amendments Act of 1988 (Pub. L. 100-630, 102 Stat. 3312). As used in this part, section 504 applies only to programs or activities conducted by the agency and not to federally assisted programs.

Substantial impairment means a significant loss of the integrity of finished materials, design quality, or special character resulting from a permanent alteration of historic properties.

§§ 105-8.104—105-8.109 [Reserved]

§ 105.8.110 Self-evaluation.

(a) The agency shall, by March 9, 1992, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the self-evaluation, maintain on file and make available for public inspection:

(1) A list of interested persons consulted;

(2) A description of the areas examined and any problems identified and;

(3) A description of any modifications made or to be made.

§ 105-8.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the Administrator finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this part.

§§ 105-8.112—105-8.129 [Reserved]

§ 105-8.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(1) The agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to

provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the agency establish requirements for the programs or activities of licenses or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by part.

(b) The exclusion of persons without handicaps from the benefits of a program limited by Federal statute or Executive order to individuals with

handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(c) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 105-8.131—105-8.139 [Reserved]

§ 105-8.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 105-8.141—105-8.147 [Reserved]

§ 105-8.148 Consultation with the Architectural and Transportation Barriers Compliance Board.

GSA shall consult with the Architectural and Transportation Barriers Compliance Board (ATBCB) in carrying out its responsibilities under this part concerning architectural barriers in facilities that are subject to GSA control. GSA shall also consult with the ATBCB in providing technical assistance to other Federal agencies with respect to overcoming architectural barriers in facilities. The agency's Public Buildings Service shall implement this section.

§ 105-8.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in §§ 105-8.150 and 105-8.154, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 105-8.150 Program accessibility: Existing facilities.

§ 105-8.150-1 General.

The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by

individuals with handicaps. This section does not—

(a) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(b) In the case of historic preservation programs, require the agency to take any action that would result in a substantial impairment of significant historic features of an historic property.

§ 105-8.150-2 Methods.

(a) *General.* The agency may comply with the requirements of § 105-8.150 through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(b) *Historic preservation programs.* In meeting the requirements of § 105-8.105-1 in historic preservation programs, the agency shall give priority to methods that provide physical access to individuals with handicaps. In cases where a physical alteration to a historic property is not required because of §§ 105-8.105-1(b) or 105-8.154 alternative methods of achieving program accessibility include—

(1) Using audio-visual materials and devices to depict those portions of a historic property that cannot otherwise be made accessible;

(2) Assigning persons to guide individuals with handicaps into or through portions of historic properties that cannot otherwise be made accessible; or

(3) Adopting other innovative methods.

§ 105-8.150-3 Time period for compliance.

The agency shall comply with the obligations established under § 105-

8.150 by May 7, 1991; except where structural changes in facilities are undertaken, such changes shall be made by March 8, 1994, but in any event as expeditiously as possible.

§ 105-8.150-4 Transition plan.

In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by March 9, 1992; the transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(a) Identify physical obstacles in the facilities occupied by GSA that limit the accessibility of its programs or activities to individuals with handicaps;

(b) Describe in detail the methods that will be used to make the facilities accessible;

(c) Specify the schedule for taking the steps necessary to achieve compliance with § 105-8.150 and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(d) Indicate the official responsible for implementation of the plan.

§ 105-8.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 to 101-19.607, apply to buildings covered by this section.

§ 105-8.152 Program accessibility: Assignment of space.

(a) When GSA assigns or reassigns space to an agency, it shall consult with the agency to ensure that the assignment or reassignment will not result in one or more of the agency's programs or activities being inaccessible to individuals with handicaps.

(b) Prior to the assignment or reassignment of space to an agency, GSA shall inform the agency of the accessibility, and/or the absence of accessibility features, of the space in

which GSA intends to locate the agency. If the agency informs GSA that the use of the space will result in one or more of the agency's programs being inaccessible, GSA shall take one or more of the following actions to make the programs accessible:

(1) Arrange for alterations, improvements, and repairs to buildings and facilities;

(2) Locate and provide alternative space that will not result in one or more of the agency's programs being inaccessible; or

(3) Take any other actions that result in making this agency's programs accessible.

The responsibility for payment to make the physical changes in the space shall be assigned on a case-by-case basis as agreed to by GSA and the user agency, dependent on individual circumstances.

(c) GSA may not require the agency to accept space that results in one or more of the agency's programs being inaccessible.

§ 105-8.153 Program accessibility: Interagency cooperation.

§ 105-8.153-1 General.

GSA, upon request from an occupant agency engaged in the development of a transition plan under section 504, shall participate with the occupant agency in the development and implementation of the transition plan and shall provide information and guidance to the occupant agency. Upon request, GSA shall conduct space inspections to assist the agency in determining whether a current assignment of space results in one or more of the occupant agency's programs or activities being inaccessible. GSA shall provide the occupant agency with a written summary of significant findings and recommendations, together with data concerning programmed repairs and alterations planned by GSA and alterations that can be effected by the agency.

§ 105-8.153-2 Requests from occupant agencies.

(a) Upon receipt of an occupant agency's request for new space, additional space, relocation to accessible space, alterations, or other actions under GSA's control that are needed to ensure program accessibility in the requesting agency's program(s) as required by the agency's section 504 transition plan, GSA shall assist or advise the requesting agency in providing or arranging for the requested action within the timeframes specified in the requesting agency's transition plan.

(b) If the requested action cannot be completed within the time frame specified in an agency's transition plan, GSA shall so advise the requesting agency within 30 days of the request by submitting, after consultation with the agency, a revised schedule specifying the date by which the action shall be completed. If the delay in completing the action results in or continues the inaccessibility of the requesting agency's program, GSA and the agency shall, after consultation, take interim measures to make the agency's program accessible.

(c) If GSA determines that it is unable to take the requested action, GSA shall—

(1) Within 30 days, set forth in writing to the requesting agency the reasons for denying the agency's request, and

(2) Within 90 days, propose to the requesting agency other methods for making the agency's program accessible.

(d) Receipt of a copy of an occupant agency's transition plan under section 504 shall constitute notice to GSA of the requested actions in the transition plan and of the times frames which the actions are required to be completed.

§ 105-8.154 Program accessibility: Exceptions.

Sections 105-8.150, 105-8.152, and 105-8.153 do not require GSA to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where GSA personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Administrator or his or her designee after considering all resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

§§ 105-8.155—105-8.159 [Reserved]

§ 105-8.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 150.8.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Administrator or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion.

If an action required to comply with § 105-8.160 would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 105-8.161—105-8.169 [Reserved]

§ 105-8.170 Compliance procedures.

§ 105-8.170-1 Applicability.

Except as provided in § 105-8.170-2, §§ 105-8.170 through 105-8.170-13 apply to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

§ 105-8.170-2 Employment complaints.

The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. S 791).

§ 105-8.170-3 Responsible Official.

The Responsible Official shall coordinate implementation of §§ 105-8.170 through 105-8.170-13.

§ 105-8.170-4 Filing a complaint.

(a) *Who may file a complaint.* Any person who believes that he or she has been subjected to discrimination prohibited by this part may by him or herself or by his or her authorized representative file a complaint with the Official. Any persons who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint with the Official.

(b) *Confidentiality.* The Official shall hold in confidence the identity of any person submitting a complaint, unless the person submits written authorization otherwise, and except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or proceeding under this part.

(c) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination. The Official may extend this time limit for good cause shown. For purposes of determining when a complaint is timely filed under this section, a complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other complaint

shall be deemed filed on the date it is received by the agency.

(d) *How to file.* Complaints may be delivered or mailed to the Administrator, the Responsible Official, or other agency officials. Complaints should be sent to the Director of Civil Rights, Civil Rights Division (AKC), General Services Administration, 18th and F Streets, NW., Washington, DC 20405. If any agency official other than the Official receives a complaint, he or she shall forward the complaint to the Official immediately.

§ 105-8.170-5 Notification to the Architectural and Transportation Barriers Compliance Board.

The agency shall prepare and forward comprehensive quarterly reports to the Architectural and Transportation Barriers Compliance Board containing information regarding complaints received alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with handicaps. The agency shall not include in the report the identity of any complainant.

§ 105-8.170-6 Acceptance of complaint.

(a) The Official shall accept a complete complaint that is filed in accordance with § 105-8.170-4 and over which the agency has jurisdiction. The Official shall notify the complainant and the respondent of receipt and acceptance of the complaint.

(b) If the Official receives a complaint that is not complete, he or she shall notify the complainant within 30 days of receipt of the incomplete complaint that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the Official shall dismiss the complaint without prejudice.

(c) The Official may reject a complaint, or a position thereof, for any of the following reasons:

(1) It was not filed timely and the extension of the 180-day period as provided in § 105-8.170-4(c) is denied;

(2) It consists of an allegation identical to an allegation contained in a previous complaint filed on behalf of the same complainant(s) which is pending in the agency or which has been resolved or decided by the agency; or

(3) It is not within the purview of this part.

(d) If the Official receives a complaint over which the agency does not have jurisdiction, the Official shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

§ 105-8.170-7 Investigation/conciliation.

(a) Within 180 days of the receipt of a complete complaint, the Official shall complete the investigation of the complaint, attempt informal resolution, and if no informal resolution is achieved, issue a letter of findings. The 180-day time limit may be extended with the permission of the Assistant Attorney General. The investigation should include, where appropriate, a review of the practices and policies that led to the filing of the complaint, and other circumstances under which the possible noncompliance with this part occurred.

(b) The Official may require agency employees to cooperate in the investigation and attempted resolution of complaints. Employees who are required by the Official to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(c) The Official shall furnish the complainant and the respondent a copy of the investigative report promptly after receiving it from the investigator and provide the complainant and the respondent with an opportunity for informal resolution of the complaint.

(d) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and signed by the complainant and respondent. The agreement shall be made part of the complaint file with a copy of the agreement provided to the complainant and the respondent. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant and the respondent have agreed.

(e) The written agreement shall remain in effect until all corrective actions to which the complainant and the respondent have agreed upon have been completed. The complainant may reopen the complaint in the event that the agreement is not carried out.

§ 105-8.170-8 Letter of findings.

If an informal resolution of the complaint is not reached, the Official shall, within 180 days of receipt of the complete complaint, notify the complainant and the respondent of the results of the investigation in a letter sent by certified mail, return receipt requested. The letter shall contain, at a minimum, the following:

(a) Findings of fact and conclusions of law;

(b) A description of a remedy for each violation found;

(c) A notice of the right of the complainant and the respondent to

appeal to the Special Counsel for Ethics and Civil Rights; and

(d) A notice of the right of the complainant and the respondent to request a hearing.

§ 105-8.170-9 Filing an appeal.

(a) Notice of appeal to the Special Counsel for Ethics and Civil Rights, with or without a request for hearing, shall be filed by the complainant or the respondent with the Responsible Official within 30 days of receipt of the letter of findings required by § 105-8.170-7.

(b) If a timely appeal without a request for hearing is filed by a party, any other party may file a written request for a hearing within the time limit specified in § 105-8.170-9(a) or within 10 days of the date on which the first timely appeal without a request for hearing was filed, whichever is later.

(c) If no party requests a hearing, the Responsible Official shall promptly transmit the notice of appeal and investigative record to the Special Counsel for Ethics and Civil Rights.

(d) If neither party files an appeal within the time prescribed in § 105-8.170-9(a) the Responsible Official shall certify, at the expiration of the time, that the letter of findings is the final agency decision on the complaint.

§ 105-8.170-10 Acceptance of appeals.

The Special Counsel shall accept and process any timely appeal. A party may appeal to the Deputy Administrator from a decision of the Special Counsel that an appeal is untimely. This appeal shall be filed within 15 days of receipt of the decision from the Special Counsel.

§ 105-8.170-11 Hearing.

(A) Upon a timely request for a hearing, the Special Counsel shall take the necessary action to obtain the services of an Administrative law judge (ALJ) to conduct the hearing. The ALJ shall issue a notice to all parties specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 days after the notice is issued and no later than 60 days after the request for a hearing is filed, unless all parties agree to a different date, or there are other extenuating circumstances.

(b) The complainant and respondent shall be parties to the hearing. Any interested person or organization may petition to become a party or amicus curiae. The ALJ may, in his or her discretion, grant such a petition if, in his or her opinion, the petitioner has a legitimate interest in the proceedings and the participation will not unduly

delay the outcome and may contribute materially to the proper disposition of the proceedings.

(c) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554-557 (sections 5-8 of the Administrative Procedure Act). The ALJ shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to—

(1) Arrange and change the date, time, and place of hearings and prehearing conferences and issue notices thereof;

(2) Hold conferences to settle, simplify, or determine the issue in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;

(3) Require parties to state their position in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(4) Examine witnesses and direct witnesses to testify;

(5) Receive, rule on, exclude, or limit evidence;

(6) Rule on procedural items pending before him or her; and

(7) Take any action permitted to the ALJ as authorized by this part, or by the provisions of the Administrative Procedure Act (5 U.S.C. 551-559).

(d) Technical rules of evidence shall not apply to hearings conducted pursuant to § 105-8.170-11, but rules or principles designed to assure production of credible evidence available and to subject testimony to cross-examination shall be applied by the ALJ whenever reasonably necessary. The ALJ may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(e) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(1) Persons employed by the agency shall, upon request to the agency by the ALJ, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(2) Employees of other Federal agencies called to testify at a hearing

shall, at the request of the ALJ and with the approval of the employing agency, be on official duty status during any period of absence from normal duties caused by their testimony, and shall not receive witness fees.

(3) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(4) The ALJ may require the agency to pay travel expenses necessary for the complainant to attend the hearing.

(5) The respondent shall pay the required expenses and charges for the ALJ and court reporter.

(6) All other expenses shall be paid by the party, the intervening party, or amicus curiae incurring them.

(f) The ALJ shall submit in writing recommended findings of fact, conclusions of law, and remedies to all parties and the Special Counsel for Ethics and Civil Rights within 30 days after receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcript is made. This time limit may be extended with the permission of the Special Counsel.

(g) Within 15 days after receipt of the recommended decision of the ALJ any party may file exceptions to the decision with the Special Counsel. Thereafter, each party will have ten days to file reply exceptions with the Special Counsel.

§ 105-8.170-12 Decision.

(a) The Special Counsel shall make the decision of the agency based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 days of receipt of the transmittal of the notice of appeal and investigative record pursuant to § 105-8.170-9(c) or after the period for filing exceptions ends, whichever is applicable. If the Special Counsel for Ethics and Civil Rights determines that he or she needs additional information from any party, he or she shall request the information and provide the other party or parties an opportunity to respond to that information. The Special Counsel shall have 60 days from receipt of the additional information to render the decision on the appeal. The Special Counsel shall transmit his or her decision by letter to the parties. The time limits established in this paragraph may be extended with the permission of the Assistant Attorney General. The decision shall set forth the findings, remedial action required, and reasons for the decision. If the decision is based on a hearing record, the Special Counsel shall consider the recommended

decision of the ALJ and render a final decision based on the entire record. The Special Counsel may also remand the hearing record to the ALJ for a fuller development of the record.

(b) Any respondent required to take action under the terms of the decision of the agency shall do so promptly. The Official may require periodic compliance reports specifying—

(1) The manner in which compliance with the provisions of the decision has been achieved;

(2) The reasons any action required by the final decision has not yet been taken; and

(3) The steps being taken to ensure full compliance. The Official may retain responsibility for resolving disagreements that arise between the parties over interpretation of the final agency decision or for specific adjudicatory decisions arising out of implementation.

§ 105-8.170-13 Delegation.

The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated to another agency.

§ 105-8.171 Complaints against an occupant agency.

(a) Upon notification by an occupant agency that it has received a complete complaint alleging that the agency's program is inaccessible because existing facilities under GSA's control are not accessible and usable by individuals with handicaps, GAS shall be jointly responsible with the agency for resolving the complaint and shall participate in making findings of fact and conclusions of law in prescribing and implementing appropriate remedies for each violation found.

(b) GSA shall make reasonable efforts to follow the time frames for complaint resolution that go into effect under the notifying occupant agency's compliance procedures when it receives a complete complaint.

(c) Receipt of a copy of the complete complaint by GSA shall constitute notification to GSA for purposes of § 105-8.171(a).

Grant B. Williams,
Director, Civil Rights Division.
[FR Doc. 91-5394 Filed 3-7-91; 8:45 am]
BILLING CODE 6820-34-M

41 CFR Part 301-1 and Chapter 304

[FTR Interim Rule 3]

RIN 3090-AE19

Federal Travel Regulation; Acceptance of Payment From a Non-Federal Source for Travel Expenses**AGENCY:** Federal Supply Service, GSA.**ACTION:** Interim rule with request for comments.

SUMMARY: This interim rule further implements legislation governing the acceptance of travel, subsistence, and related expenses from a non-Federal source. It provides central policy direction on the subject and cancels a previous interim rule (54 FR 53321) which provided temporary policy direction pending development of this rule.

DATES: This interim rule is effective March 8, 1991, and applies for travel performed on or after March 8, 1991. Comments are requested on new § 301-1.2(c) and revised part 304-1 only and must be submitted by May 7, 1991.

ADDRESSES: Send comments to the General Services Administration, Travel Management Division (FBT), Washington, DC 20406, telefax (703) 557-3094.

FOR FURTHER INFORMATION CONTACT: Lennard Loewentritt or Janet Harney, Office of General Counsel (LP), Washington, DC 20405, telephone FTS 241-1156 or commercial (202) 501-1156.

SUPPLEMENTARY INFORMATION: Section 302 of the Ethics Reform Act of 1989 (Pub. L. 101-194, approved November 30, 1989) amended title 31, United States Code, by adding a new section 1352 "Acceptance of travel and related expenses from non-Federal sources." Public Law 101-280 renumbered and amended various provisions of section 1352, now designated as section 1353, and gives the Administrator of General Services, in consultation with the Director of the Office of Government Ethics, authority to issue implementing regulations.

On December 28, 1989, the General Services Administration (GSA) published an interim rule (54 FR 53321) which provided temporary policy direction on the subject pending the development of an expanded rule. This interim rule with request for comments implements section 1353 and cancels the previous interim rule published at 54 FR 53321. As such, it amends 41 CFR 301-1.3 to delete the interim rule's codifying language and thereby reflect its cancellation. Following receipt and reconciliation of requested comments,

GSA will make any changes deemed appropriate and issue a final rule governing the acceptance of travel and related expenses from a non-Federal source. This rule implements a reporting requirement imposed by 31 U.S.C. 1353; a standard reporting form may be issued at a later date. The first agency report required under § 304-1.9 will be submitted not later than May 31, 1991, with respect to payments accepted from the date of publication of this interim rule through March 31, 1991.

GSA has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Parts 301-1, 304-1, and 304-2

Government employees, Travel, Travel allowances, Travel and transportation expenses.

For the reasons set out in the preamble, 41 CFR part 301-1 is amended and chapter 304 is revised as set forth below:

PART 301-1—APPLICABILITY AND GENERAL RULES

1. The authority citation for part 301-1 is revised to read as follows:

Authority: 5 U.S.C. 5701-5709; 31 U.S.C. 1353; E.O. 11609, July 22, 1971 (36 FR 13747).

2. Section 301-1.1 is revised to read as follows:

§ 301-1.1 Authority.

This chapter is issued under the authority of 5 U.S.C. 5701-5709 and 31 U.S.C. 1353.

3. Section 301-1.2 is amended by revising paragraph (b) and adding new paragraph (c) to read as follows:

§ 301-1.2#189 Applicability.

(b) This chapter 301 also applies to official travel of individuals employed intermittently in the Government service as consultants or experts and paid on a daily when-actually-employed (WAE) basis and of individuals serving without pay or at \$1 a year. These individuals

are not considered to have a "permanent duty station" within the general meaning of that term; however, they may be allowed travel or transportation expenses under this chapter while traveling on official business for the Government away from their homes or regular places of business and while at places of Government employment or service. Maximum rates prescribed herein are applicable except as provided in paragraph (c) of this section or unless a higher rate is specifically authorized in an appropriation or other statute.

(c) To the extent the Government has received payment and except as provided in § 304-1.7, acceptance of payment for, and reimbursement by an agency to, an employee (and/or the accompanying spouse of such employee when applicable) under part 304-1 are not subject to the maximum rates prescribed in this chapter 301 for reimbursable travel expenses.

4. Section 301-1.3 is amended by revising paragraph (b) to read as follows:

§ 301-1.3 General rules.

* * * * *

(b) *Reimbursable expenses.* Travel expenses which will be reimbursed are confined to those expenses essential to the transaction of official business.

* * * * *

5. Chapter 304 is revised to read as follows:

CHAPTER 304—PAYMENT FROM A NON-FEDERAL SOURCE FOR TRAVEL EXPENSES

Part 304-1 Acceptance of payment from a non-Federal source for travel expenses.

Part 304-2 Reductions in meeting and training allowance payments.

PART 304-1—ACCEPTANCE OF PAYMENT FROM A NON-FEDERAL SOURCE FOR TRAVEL EXPENSES

Sec.

304-1.1 Authority.

304-1.2 General.

304-1.3 Policy.

304-1.4 Conditions for acceptance.

304-1.5 Payment from a conflicting non-Federal source.

304-1.6 Payment guidelines.

304-1.7 Reimbursement claims for official travel expenses.

304-1.8 Limitations and penalties.

304-1.9 Reports.

Authority: 31 U.S.C. 1353; 5 U.S.C. 5701-5709; E.O. 11609, July 22, 1971 (36 FR 13747).

§ 304-1.1 Authority.

This part is issued under the authority of 31 U.S.C. 1353 and 5 U.S.C. 5701-5709.

§ 304-1.2 General.

(a) *Applicability.* This part applies to agency acceptance of payment from a non-Federal source for travel, subsistence, and related expenses with respect to the attendance of an employee in a travel status (and/or the accompanying spouse of such employee when applicable) at any meeting or similar function relating to the official duties of the employee. This part does not authorize personal acceptance of such payments by an employee or the accompanying spouse of an employee (see, however, § 304-1.8(a)).

(b) *Definitions.* As used in this part, the following definitions apply:

(1) *Agency.* Agency means an executive agency as defined in 5 U.S.C. 105, and includes an independent agency as well as an agency within the Executive Office of the President.

(2) *Conflicting non-Federal source.* A conflicting non-Federal source is any person who, or entity other than the Government of the United States which, has interests that may be substantially affected by the performance or nonperformance of the employee's duties.

(3) *Employee.* Employee means an appointed officer or employee of an agency, including an expert or consultant in the executive branch (as defined in 31 U.S.C. 1353) appointed under the authority of 5 U.S.C. 3109.

(4) *Meeting or similar function.* Meeting or similar function means a conference, seminar, speaking engagement, training course, or similar event that takes place away from the employee's official station. A meeting or similar function need not be widely attended for purposes of this definition. This term does not include events required to carry out an agency's statutory and regulatory functions, such as investigations, inspections, audits, or site visits, and does not include promotional vendor training or other meetings held for the primary purpose of marketing the non-Federal source's products or services.

(5) *Non-Federal source.* Non-Federal source means any person or entity other than the Government of the United States. The term includes any individual, private or commercial entity, nonprofit organization or association, state, local, or foreign government, or international or multinational organization.

(6) *Payment.* Payment means funds paid for travel, subsistence, and related expenses by check or similar instrument to an agency, or payment in kind.

(7) *Payment in kind.* Payment in kind means goods or services provided in lieu of funds paid to an agency by check or

similar instrument for travel, subsistence, and related expenses.

(8) *Travel, subsistence, and related expenses.* Travel, subsistence and related expenses includes the same types of expenses payable under chapter 301 of this title or analogous provisions of Volume 6 of the Foreign Affairs Manual (FAM) or Volume 1 of the Joint Federal Travel Regulations (JFTR). The term also includes expenses such as conference or training fees as well as other benefits which cannot be paid under the applicable travel regulation and which are provided in kind and made available by the sponsor to all attendees incident to and for use at the meeting or similar function.

§ 304-1.3 Policy.

As provided in this part, an agency may accept payment from a non-Federal source (or authorize an employee to receive such payment on its behalf) with respect to attendance of the employee at a meeting or similar function which the employee has been authorized to attend in an official capacity on behalf of the employing agency. An employee shall not solicit payment from a non-Federal source. However, after receipt of an invitation from a non-Federal source to attend a meeting or similar function, the agency or employee may inform the non-Federal source of this authority. An agency may accept payment under this part from a non-Federal source for an accompanying spouse when it determines that the spouse's presence at the meeting or similar function will support the mission of the employee's agency or substantially assist the employee in carrying out his/her duties through attendance at or participation in the meeting or similar function. However, the accompanying spouse shall not be deemed a Government employee for any purpose other than eligibility for payment of travel, subsistence, and related expenses under this part. Agencies shall ensure that officials delegated authority to determine the propriety of accepting payments under this part are at as high an administrative level as practical to ensure adequate consideration and review of the circumstances surrounding the offer and acceptance of the payment. Acceptance of payment for, and reimbursement by an agency to, an employee (and/or the accompanying spouse of such employee when applicable) under this part are not subject to the maximum rates prescribed in chapter 301 of this title when full payment is made by the non-Federal source for one or more types of travel expenses to be reimbursed. Payment

acceptance must be in accordance with internal agency procedures.

§ 304-1.4 Conditions for acceptance.

(a) An agency may accept payment for employee and/or spousal travel from a non-Federal source when an authorized agency official determines in advance of the travel that the payment is:

(1) For travel relating to an employee's official duties (including attendance because the employee's presence at the meeting is necessary to permit participation in the meeting by another employee or because a spouse's presence will support the mission of the employee's agency or substantially assist the employee in carrying out his/her duties through attendance at or participation in the meeting or similar function) under an official travel authorization issued to the employee, and to an accompanying spouse when applicable;

(2) For attendance at a meeting or similar function as defined in § 304-1.2(b)(4); and

(3) From a non-Federal source that is not a conflicting non-Federal source or from a conflicting non-Federal source that has been approved under § 304-1.5

(b) Payments may be accepted from multiple sources under paragraph (a) of this section.

(c) If a meeting or similar function does not concern a subject of mutual interest to the employee's agency and the non-Federal source, acceptance of payment from the non-Federal source under paragraph (a) of this section is limited to payment in kind and to the types of services the non-Federal source generally provides; e.g., air passenger transportation services provided by a commercial airline.

§ 304-1.5 Payment from a conflicting non-Federal source.

The agency may accept payment from a conflicting non-Federal source if the conditions of § 304-1.4 are met and the authorized agency official (designated in accordance with § 304-1.3) determines that the agency's interest in the employee's and/or the accompanying spouse's attendance at or participation in the event outweighs concern that acceptance of the payment may or may reasonably appear to influence improperly the employee in the performance of his/her official duties. In determining whether to accept payment, an agency shall consider all relevant factors, including the importance of the travel for the agency, the nature and sensitivity of any pending matter affecting the interests of the conflicting

non-Federal source, the significance of the employee's role in any such matter, the purpose of the meeting or similar function, the identity of other expected participants, and the value and character of the travel benefits offered by the conflicting non-Federal source.

§ 304-1.6 Payment guidelines.

(a) *Payment other than in kind.*

Payments from a non-Federal source for an employee and/or accompanying spouse, other than payments in kind, shall be by check or similar instrument made payable to the agency. Any such payment received by the employee on behalf of the agency for his/her travel and/or that of the accompanying spouse is accepted on behalf of the agency and is to be submitted as soon as practicable for credit to the agency appropriation applicable to such expenses. Reimbursement for an employee's and/or accompanying spouse's travel expenses is not subject to the maximum rates prescribed in the applicable travel regulation (chapter 301 of this title, FAM, or JFTR) when full payment is made by the non-Federal source for one or more types of the travel expenses, provided that the accommodation or other benefit furnished is comparable in value to that offered to, or purchased by, other similarly situated individuals attending the meeting or similar function.

(b) *Payment in kind.* When the acceptance of payment has been approved in advance by the authorized agency official, the employee, for his/her travel (and/or that of the accompanying spouse, when applicable), may receive payment in kind in excess of limitations (including maximum per diem rates) under the applicable travel regulation (chapter 301 of this title, FAM, or JFTR), provided that the accommodation or other benefit is comparable in value to that offered to, or purchased by, other similarly situated individuals attending the meeting or similar function.

§ 304-1.7 Reimbursement claims for official travel expenses.

(a) The employee (and/or accompanying spouse when applicable) shall submit to the employing agency on authorized reimbursement forms all travel expense reimbursement claims, and shall itemize all expenses incurred which exceed maximum rates prescribed under the applicable travel regulation (chapter 301 of this title, FAM, or JFTR). The employee, and/or accompanying spouse when applicable, shall be reimbursed either an amount not to exceed the maximum rate prescribed in the applicable travel

regulation, or when full payment is made by the non-Federal source for one or more types of the travel expenses, the amount of that payment from the non-Federal source. However, reimbursement for expenses in excess of applicable regulatory limitations shall not in any case exceed the amount of expenses incurred.

(b) The agency may reimburse the employee (and/or accompanying spouse of such employee when applicable) for only the types of expenses defined in §§ 301-7.1 (b)(5) and (c) of this title or in analogous provisions of the FAM or JFTR, as applicable, for per diem allowances, transportation expenses, or other miscellaneous travel expenses.

(c) If an accepted payment covers only a portion of one or more types of the expenses incurred (e.g., \$50.00 per night for lodging in a locality with an \$85.00 per night maximum lodging allowance), the agency shall reimburse the employee (and/or accompanying spouse when applicable) only the amount to which he/she otherwise would be entitled under applicable regulation (chapter 301 of this title, FAM, or JFTR).

(d) If an accepted payment covers in full one or more types of expenses described in paragraph (b) of this section (e.g., payment for lodging accommodations) but does not cover all of the travel expenses incurred, the agency shall reimburse the employee (and/or accompanying spouse of such employee when applicable) for those expenses that are not covered by the payment, not to exceed applicable limitations established in chapter 301 of this title or in analogous provisions of the FAM or JFTR.

§ 304-1.8 Limitations and penalties.

(a) Except as provided in paragraphs (a) (1) through (3) of this section, this part is the only authority under which an agency may accept payment from a non-Federal source, or authorize an employee to accept such payment on behalf of the agency, in connection with the attendance of its employee (and the accompanying spouse of such employee when applicable) at a meeting or similar function. An agency may not accept under an agency gift statute or other similar authority, payment for the travel, subsistence, and related expenses of an employee or accompanying spouse incurred to attend a meeting or similar function. However, nothing in this part authorizes or prohibits an agency or employee from accepting payment as follows:

(1) When authorized under 5 U.S.C. 4111 or 5 U.S.C. 7342;

(2) When payment is otherwise authorized and an employee's travel is for a personal rather than official purpose, or for a partisan rather than official purpose and is not prohibited by the provisions of the Hatch Act (5 U.S.C. 7321 *et seq.*); or

(3) When payment is otherwise authorized and the employee's travel is for attendance at or participation in an event other than a meeting or similar function.

(b) An employee who accepts any payment in violation of this part is subject to the following:

(1) The employee may be required, in addition to any penalty provided by law and applicable regulations, to repay for deposit to the general fund of the Treasury, an amount equal to the amount of the payment so accepted; and

(2) When repayment is required under paragraph (b)(1) of this section, the employee shall not be entitled to any payment or reimbursement from the Government for such expenses.

§ 304-1.9 Reports.

(a) *Agency reports.* (1) The head of each agency (or his/her designee) shall submit to the Director of the Office of Government Ethics (OGE), 1201 New York Avenue, N.W., Suite 500, Washington, DC 20005-3917, semiannual reports of payments, as defined in this part, which total more than \$250 per event, and which have been accepted under this part with respect to the attendance at, or participation in, a meeting or similar function by an agency employee, and/or accompanying spouse of such employee when applicable. The Director of OGE shall make such reports available for public inspection and copying. These reports shall:

(i) Specify the name of the employee (and/or spouse when applicable), the position held by the employee, the name of the person or entity making the payment, the nature of the meeting or similar function, the time and place of travel, the amount and method of the payment, and the nature of the expenses;

(ii) Be submitted not later than May 31 of each year with respect to payments in the preceding period beginning on October 1 and ending on March 31; and

(iii) Be submitted not later than November 30 of each year with respect to payments in the preceding period beginning on April 1 and ending on September 30.

(2) In the case of acceptance of travel on a private or chartered aircraft, for purposes of agency reports under this section, value shall be determined by computing the total constructive cost of

transportation using premium-class air fares to the extent scheduled air service is available between the relevant cities.

(b) *Employee reports.* Payments properly accepted under this part, if received by an employee, are accepted on behalf of the agency and must be submitted to the agency for credit to the agency appropriation applicable to such expenses. Therefore, receipt of such a payment by an employee for himself/herself and/or the accompanying spouse, when applicable under the authority of this part, is not required to be reported as a gift on any confidential or public financial disclosure report that the employee is required to file pursuant to law or OGE regulation. Acceptance of payment by an employee for himself/herself and/or the accompanying spouse, when applicable, that is not authorized under this part may require reporting of the payment on the employee's financial disclosure report and may subject the employee to agency disciplinary procedures.

PART 304-2—REDUCTIONS IN MEETING AND TRAINING ALLOWANCE PAYMENTS

Sec.

- 304-2.1 Authority.
- 304-2.2 Applicability.
- 304-2.3 Conditions for approval of contributions or payments.
- 304-2.4 Agency responsibilities.

Authority: 5 U.S.C. 4111(b); E.O. 11609, July 22, 1971 (36 FR 13747).

§ 304-2.1 Authority.

This part is issued under the authority of 5 U.S.C. 4111(b).

§ 304-2.2 Applicability.

Subject to the exceptions in 5 U.S.C. 4102, this part 304-2 applies to civilian officers and employees of executive agencies, including the Department of Defense; independent establishments, as defined in 5 U.S.C. 104; Government corporations, subject to 31 U.S.C. 9101 *et seq.*; the Library of Congress; the Government Printing Office; the Government of the District of Columbia; and commissioned officers of the National Oceanic and Atmospheric Administration. All such officers and employees and all such agencies, independent establishments, and departments are hereinafter referred to in this part 304-2 as "employees" or "agencies," as appropriate.

§ 304-2.3 Conditions for approval of contributions or payments.

Section 303(j) of Executive Order 11348 of April 20, 1967, and the regulations issued by the Office of Personnel Management under section

401(b) of that Order, prescribe the conditions under which agency heads may approve the acceptance by employees of contributions and awards incident to training and payments incident to attendance at meetings, under 5 U.S.C. 4111(a), from the organizations described therein. These organizations are hereinafter referred to as "donors."

§ 304-2.4 Agency responsibilities.

Agency heads shall provide adequate safeguards to ensure that the following regulations are carried out:

(a) Where an approved payment by a donor fully covers expenses incident to training in a non-Government facility, or travel, subsistence, or other expenses incident to attendance at a meeting, the agency shall not pay for such expenses or shall recover payments previously made in the manner described in paragraph (c) of this section.

(b) If an approved payment by a donor does not fully cover expenses described in paragraph (a) of this section, the agency may pay an amount considered sufficient to cover the balance of the expenses to the extent authorized by law and regulation, including 5 U.S.C. 4109 and 4110. If an amount in excess of such balance has been previously paid by the agency, such amount shall be recovered from the employee in the manner described in paragraph (c) of this section.

(c) Recoveries of payments, as provided in paragraph (b) of this section, shall be made in the manner prescribed by regulations of the agency concerned and shall be issued according to 5 U.S.C. 5514.

(d) No reduction in payment by an agency is required where an approved contribution or award to an employee covers types of expenses which the agency is not authorized to pay. For example, where an agency authorizes travel expenses of an employee, including per diem and transportation expenses of his/her immediate family and household goods and personal effects to a training location, no reduction in payment by the agency is required if an approved contribution or award covers subsistence expenses of the family en route and expenses incurred by the employee in establishing himself/herself and the family at the training location.

(e) Expense data shall be obtained from employees or donors in such detail as the agency head deems necessary to carry out this regulation.

Dated: February 11, 1991

Richard G. Austin,
Administrator of General Services.
[FR Doc. 91-5295 Filed 3-7-91; 8:45 am]
BILLING CODE 6820-24-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 80

[GEN Docket No. 90-133; FCC 91-17]

Maritime Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: The Report and Order revised the maritime channeling plans in the HF bands between 4000-27500 kHz allocated exclusively to the maritime mobile service. The revisions reflect changes to the international Radio Regulations that were adopted by the Final Acts of the World Administrative Radio Conference for Mobile Services, Geneva, 1987, (1987 Mobile WARC). The worldwide changes will take effect at 0001 hours Coordinated Universal Time (UTC) on July 1, 1991, and will affect every licensed ship and coast station that operates on HF band frequencies between 4000 kHz and 27500 kHz.

EFFECTIVE DATE: July 1, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kathryn S. Hosford, Special Services Division, Private Radio Bureau, Federal Communications Commission, Washington, DC 20554; or telephone (202) 632-7197.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, GEN Docket No. 90-133, adopted January 10, 1991, and released January 30, 1991. The complete text of the Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The full text also may be purchased from the Commission's copy contractor: (Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036; telephone 202-452-1422.)

Summary of Report and Order

1. The Report and Order sets forth the amendments that are necessary to implement the Final Acts of the World Administrative Radio Conference for Mobile Services, 1987, (1987 Mobile

WARC) into the Commission's Rules. The changes to the international Radio Regulations revised the high frequency (HF) bands between 4000-27500 kHz that are allocated exclusively to the maritime mobile service. The changes adopted by the 1987 Mobile WARC expanded the frequency spectrum available for newer forms of maritime mobile systems.

2. The revisions reflect an increase in frequencies for digital selective calling (DSC), narrow-band direct-printing (NBDP), and voice radiotelephony (SSB), and a decrease in spectrum available for manual Morse code telegraphy. The Report and Order adopted an additional 200 duplex and 153 simplex frequencies for NBDP, tripled the number of DSC frequencies, added 35 duplex SSB frequencies for public correspondence distributed by geographic regions, and added 6 simplex SSB frequencies for private communications (*i.e.*, one 4 MHz, one 6 MHz, two 18 MHz, and two 25 MHz for private coast stations). Coast station applications for the additional DSC, NBDP, and SSB frequencies may be filed with the Commission as of March 1, 1991, but they cannot be used until July 1, 1991, in accordance with international provisions.

3. The Report and Order further provided that public coast station applicants provide a justification of their

need for additional frequencies. This justification should include a showing indicating that recent traffic usage exceeds 40 percent at peak hours. The Commission noted that the justification will foster efficient use of the frequencies. Further, this showing will prevent frequency hoarding and allow an effective means to distribute the 35 new duplex SSB frequencies for public correspondence.¹ It stated that this requirement should not be burdensome on public coast stations licensees because, as common carriers, they already maintain records on traffic for billing purposes and must file tariffs with the Commission for the communication services provided.

4. To accomplish the shift from manual to automated systems, the existing maritime frequencies were also rearranged. Consequently, at 0001 hours Coordinated Universal Time (UTC) on July 1, 1991, virtually every maritime station worldwide, coast and ship, public and private, operating on

¹ Applicants for the new duplex channels for radiotelephony would need to include this justification for each frequency band requested. Because a record of a two month period is necessary for the justification, only one channel per frequency band may be processed at a time. Inherently, this application process will permit the assignment of the new frequencies only to those that can demonstrate a need based on traffic.

frequencies between 4000-27500 kHz must change frequencies. There are approximately 40,000 ship stations and 9,000 coast stations currently licensed in the United States to operate on HF band frequencies that must change frequencies on July 1, 1991. The Report and Order noted that one commenter indicated that modifying coast station facilities could cost hundreds of dollars. There was no opposition to the changes, however, and no alternatives were identified. Further, the HF band revisions are necessary to improve the HF terrestrial systems in anticipation of implementing the Global Maritime Distress and Safety System (GMDSS).² After weighing all aspects of this proceeding, the Commission concluded that the amendments represented the most reasonable and least burdensome course of action to ensure compliance with international provisions.

² GMDSS will replace the present maritime distress and safety system, which relies on ship-to-ship distress alerting using manual Morse code, with a fully automated ship-to-shore distress alerting system using satellite and digital technologies. It will provide a new standard of safety for seafarers worldwide. It will be phased in internationally from 1992 to 1999. Provisions for implementing the GMDSS into the Commission's Rules were proposed in the Notice of Proposed Rule Making, PR Docket No. 90-480, 5 FCC Rcd 6212 (1990), adopted October 11, 1990, 55 FR 45816, October 31, 1990.

5. This is the second in a series of three rule making proceedings implementing the 1987 Mobile WARC into the Commission's Rules. These amendments will bring the United States into conformance with the international Radio Regulations without delay and, therefore, their adoption is in the public interest. The Report and Order noted, however, that the U.S. Senate has not given its advice and consent to ratification of the Final Acts of the 1987 Mobile WARC. Should any provision of the Final Acts not be ratified as written, further amendments of the rules may be required.

6. The decisions contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information requirement on the public. The Office of Management and Budget (OMB) has approved the collection of information contained in these rules. The collection requirement is reported in the Application for Land Radio Station License in the Maritime Service (FCC Form 503). The OMB control number for this collection of information requirement is No. 3060-0089.

7. Accordingly, *it is ordered*, pursuant to the authority contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), that parts 2 and 80 of the

Commission's Rules ARE AMENDED as set forth below.

8. *It is further ordered* that, consistent with the Final Acts of the World Administrative Radio Conference for Mobile Services, Geneva, 1987, this Report and Order is effective at 0001 hours UTC on July 1, 1991.

9. *It is further ordered* that a copy of this Report and Order be sent to the Chief Counsel for Advocacy of the Small Business Administration.

10. *It is further ordered* that this proceeding is terminated.

List of Subjects

47 CFR Part 2

Frequency allocations, Radio, Treaties.

47 CFR Part 80

Coast stations, Communications equipment, Marine safety, Radio, Ship stations, Telegraph, Telephone.

Federal Communications Commission

Donna R. Searcy,
Secretary.

Amended Rules

Appendix

Parts 2 and 80 of Title 47 of the Code

of Federal Regulations are amended as follows:

PART 2—[AMENDED]

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 4, 302, 303, 307, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, 307, unless otherwise noted.

2. In § 2.106, the Table of Frequency Allocations is amended by revising columns (4) and (5) for entry 4000-4438, columns (1) through (3) for entry 4063-4438, columns (1) through (5) for entry 6200-6525, columns (4) and (5) for entry 8100-8815, columns (1) through (3) for entry 8195-8815, columns (1) through (5) for entry 12230-13200, columns (1) through (6) for entry 16360-17410, and columns (1) through (5) for entries 18168-18780, 18780-18900, 19680-19800, 22000-22855, 25070-25210, and 26100-26175; further, the subsequent International Footnotes are amended by removing and reserving footnote 523, by removing the notes to footnotes 500A and 500B, revising footnotes 500, 500A, 500B, 501, 505, 517, 520, and by adding footnotes 520A, 520B, and 529A in the appropriate positions; and finally, the United States (US) Footnotes are amended by revising US296 to read as follows:

§ 2.106 Table of Frequency Allocations.

International table			United States table		FCC use designators	
Region 1—allocation kHz	Region 2—allocation kHz	Region 3—allocation kHz	Government allocation kHz	Non-Government allocation kHz	Rule part(s)	Special-use frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
4000-4063	.	.	4000-4438 MARITIME MOBILE 500A 500B 520 520B	4000-4438 MARITIME MOBILE 500A 500B 520 520B	.	.
4063-4438	MARITIME MOBILE 500A 500B 520 520A 520B 518 519					
6200-6525	MARITIME MOBILE 500A 500B 520 520B 522	.	US82 US236 US296	US82 US236 US296	.	.
8100-8195	.	.	6200-6525 MARITIME MOBILE 500A 500B 520 520B US82 US296	6200-6525 MARITIME MOBILE 500A 500B 520 520B US82 US296	.	.
8195-8815	MARITIME MOBILE 500A 500B 520B 529A 501	.	8100-8815 MARITIME MOBILE 500A 500B 520B 529A	8100-8815 MARITIME MOBILE 500A 500B 520B 529A	.	.
			501 US82 US236 US296	501 US82 US236 US296	.	.

12230-13200	MARITIME MOBILE 500A 500B 520B 529A 532	12230-13200 MARITIME MOBILE 500A 500B 520B 529A US82 US296	12230-13200 MARITIME MOBILE 500A 500B 520B 529A US82 US296	MARITIME (80)	
16360-17410	MARITIME MOBILE 500A 500B 520B 529A 532	16360-17410 MARITIME MOBILE 500A 500B 520B 529A US82 US296	16360-17410 MARITIME MOBILE 500A 500B 520B 529A US82 US296		
18168-18780	FIXED Mobile except aeronautical mobile	18168-18780 FIXED Mobile	18168-18780 FIXED Mobile		
18780-18900	MARITIME MOBILE 532	18780-18900 MARITIME MOBILE US82 US296	18780-18900 MARITIME MOBILE US82 US296		
19680-19800	MARITIME MOBILE 520B 532	19680-19800 MARITIME MOBILE 520B	19680-19800 MARITIME MOBILE 520B		
22000-22855	MARITIME MOBILE 520B 532 540	22000-22855 MARITIME MOBILE 520B US82 US296	22000-22855 MARITIME MOBILE 520B US82 US296		
25070-25210	MARITIME MOBILE 544	25070-25210 MARITIME MOBILE US82 US281 US296	25070-25210 MARITIME MOBILE US82 US281 US296 NG112		
26100-26175	MARITIME MOBILE 520B 544	26100-26175 MARITIME MOBILE 520B	26100-26175 MARITIME MOBILE 520B		

International Footnotes

* * * * *

500 The carrier frequency 2182 kHz is an international distress and calling frequency for radiotelephony. The conditions for the use of the band 2173.5–2190.5 kHz are prescribed in Articles 37, 38, N 38, and 60.

500A The frequencies 2187.5 kHz, 4207.5 kHz, 6312 kHz, 8414.5 kHz, 12577 kHz, and 16804.5 kHz are international distress frequencies for digital selective calling. The conditions for the use of these frequencies are prescribed in Article N 38.

500B The frequencies 2174.5 kHz, 4177.5 kHz, 6288 kHz, 8376.5 kHz, 12520 kHz, and 16695 kHz are international distress frequencies for narrow-band direct-printing telegraphy. The conditions for the use of these frequencies are prescribed in Article N 38.

501 The carrier frequencies 2182 kHz, 3023 kHz, 5680 kHz, 8364 kHz and the frequencies 121.5 MHz, 156.8 MHz and 243 MHz may also be used, in accordance with the procedures in force for terrestrial radiocommunication services, for search and rescue operations concerning manned space vehicles. The conditions for the use of the frequencies are prescribed in Articles 38 and N 38. The same applies to the frequencies 10003 kHz, 14993 kHz and 19993 kHz, but in each of these cases emissions must be confined in a band of ± 3 kHz about the frequency.

* * * * *

505 The carrier (reference) frequencies 3023 kHz and 5680 kHz may also be used, in accordance with Articles 38 and N 38 by stations of the maritime mobile service engaged in coordinated search and rescue operations.

* * * * *

517 The use of the band 4000–4063 kHz by the maritime mobile service is limited to ship stations using radiotelephony (see No. 4374 and Appendix 16).

* * * * *

520 The conditions for the use of the carrier frequencies 4125 kHz and 6215 kHz are prescribed in Articles 37, 38, N 38 and 60.

520A The frequency 4209.5 kHz is used exclusively for the transmission by coast stations of meteorological and navigational warnings and urgent information to ships by means of narrow-band direct-printing techniques (see Resolution 332 (Mob-87)).

520B The frequencies 4210 kHz, 6314 kHz, 8416.5 kHz, 12579 kHz, 16806.5 kHz, 19680.5 kHz, 22376 kHz, and 26100.5 kHz are the international frequencies for the transmission of Maritime Safety Information (MSI) (see Resolution 333 (Mob-87) and Appendix 31).

* * * * *

529A The conditions for the use of the carrier frequency 8291 kHz, 12290 kHz, and 16420 kHz, are prescribed in Articles 38, N 38 and 60.

United States (US) Footnotes

* * * * *

US296 Until July 1, 1991, in the bands designated for ship wide-band telegraphy, facsimile and special transmission systems, the following assignable frequencies are available to non-Government stations on a shared basis with Government stations: 2070.5, 2072.5, 2074.5, 2076.5, 4160.6, 4168, 6230.6, 6242.6, 8326, 8341.5, 12485, 12489, 16654, 16658, 22186 and 22190 kHz. Effective July 1, 1991, in the bands designated for ship wide-band telegraphy, facsimile and special transmission systems, the following assignable frequencies are available to non-Government stations on a shared basis with Government stations: 2070.5, 2072.5, 2074.5, 2076.5, 4154.5, 4169.5, 6235.5, 6259.5, 8302.5, 8338.5, 12370.5, 12418.5, 16551.5, 16614.5, 18847.5, 18868.5, 22181.5, 22238.5, 25123.5, and 25159.5 kHz.

* * * * *

PART 80—[AMENDED]

3. The authority citation for Part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat.

SHIP MORSE CALLING FREQUENCIES (kHz)

Region:	ITU							ITU	
Worldwide	3	4184.0	6276.0	8368.0	12552.0	16736.0	22280.5	C	25172.0
Atlantic:	4	4184.5	6276.5	8369.0	12553.5	16738.0	22281.0	C	25172.0
Initial	1	4182.0	6277.0	8366.0	12550.0	16734.0	22279.5	A	25171.5
Alternate	2	4182.5	6277.5	8366.5	12550.5	16734.5	22280.0	A	25171.5
Caribbean:									
Initial	1	4182.0	6277.0	8366.0	12550.0	16734.0	22279.5	A	25171.5
Alternate	2	4182.5	6277.5	8366.5	12550.5	16734.5	22280.0	A	25171.5
Gulf-Mexico:									
Initial	5	4183.0	6278.0	8367.0	12551.0	16735.0	22281.5	A	25171.5
Alternate	6	4183.5	6278.5	8367.5	12551.5	16735.5	22282.0	A	25171.5
N Pacific:									
Initial	7	4185.0	6279.0	8368.5	12552.5	16736.5	22282.5	B	25172.5
Alternate	8	4185.5	6279.5	8369.5	12553.0	16737.0	22283.0	B	25172.5
S Pacific:									
Initial	9	4186.0	6280.0	8370.0	12554.0	16737.5	22283.5	B	25172.5
Alternate	10	4186.5	6280.5	8370.5	12554.5	16738.5	22284.0	B	25172.5

* * * * *

5. Section 80.357 is amended by revising paragraph (a)(3) in its entirety,

by revising the text of paragraph (b)(1) in its entirety, by revising the table numbers listed in columns entitled 16

1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

4. In § 80.355, paragraph (c)(2) is revised in its entirety to read as follows:

§ 80.355 Distress, urgency, safety, call and reply Morse code frequencies.

* * * * *

(c) * * *

(2) *Ship station frequencies.* The following table describes the calling frequencies in the 4000–27500 kHz band which are available for use by authorized ship stations equipped with crystal controlled oscillators for A1A or J2A radiotelegraphy. There are two series of frequencies for worldwide use and two series of frequencies for each geographic region. Ship stations with synthesized transmitters may operate on every full 100 Hz increment in the 0.5 kHz channel for the frequencies listed, except for 100 Hz above and below those designated for worldwide use. During normal business hours when not communicating on other frequencies, all U.S. coast radiotelegraph stations must monitor the worldwide frequencies and the initial calling frequencies for the region in which it is located. The specific frequencies which must be monitored by a coast station will vary with propagation conditions. The calling frequencies which are routinely monitored by specific coast stations can be determined by reference to the ITU publication entitled "List of Coast Stations". Initial calls by ship stations must be made on the appropriate initial calling frequency first. Calls on the worldwide frequencies may be made only after calls on the appropriate initial calling frequency are unsuccessful.

MHz and 22 MHz of paragraph (b)(1) in their entirety, and by revising paragraph

(b)(2)(ii) in its entirety to read as follows:

§ 80.357 Morse code working frequencies.

* * * * *

(a) * * *

(3) *Frequencies in the 2000-27500 kHz band.* This paragraph describes the working frequencies and Channel Series in the 2000-27500 kHz band which are assignable to ship stations.

(i) Two Channel Series will be assigned for routine use to each ship

station. Frequencies from any other Channel Series may be used if the frequencies in the assigned Channel Series are not adequate for communications.

SHIP MORSE WORKING FREQUENCIES (kHz)

Channel Series:							
W1	4187.0	6285.0	8342.0 8343.5	12422.0 12453.0	16619.0 16650.0 16681.0	22242.0 22273.0	25161.5
W2	4187.5	6285.5	8342.5 8344.0	12422.5 12453.5	16619.5 16650.5 16681.5	22242.5 22273.5	25162.0
W3	4188.0	6286.0	8343.0 8344.5	12423.0 12454.0	16620.0 16651.0 16682.0	22243.0 22274.0	25162.5
W4	4188.5	6286.5	8343.5 8345.0	12423.5 12454.5	16620.5 16651.5 16682.5	22243.5 22274.5	25163.0
W5	4189.0	6287.0	8344.0 8345.5	12424.0 12455.0	16621.0 16652.0 16683.0	22244.0 22275.0	25163.5
W6	4189.5	6287.5	8344.5 8346.0	12424.5 12455.5	16621.5 16652.5 16683.5	22244.5 22275.5	25164.0
W7	4190.0	6288.0	8345.0 8346.5	12425.0 12456.0	16622.0 16653.0 16684.0	22245.0 22276.0	25164.5
W8	4190.5	6288.5	8345.5 8347.0	12425.5 12456.5	16622.5 16653.5 16684.5	22245.5 22276.5	25165.0
W9	4191.0	6289.0	8346.0 8347.5	12426.0 12457.0	16623.0 16654.0 16685.0	22246.0 22277.0	25165.5
W10	4191.5	6289.5	8346.5 8348.0	12426.5 12457.5	16623.5 16654.5 16685.5	22246.5 22277.5	25166.0
W11	4192.0	6290.0	8347.0 8348.5	12427.0 12458.0	16624.0 16655.0 16686.0	22247.0 22278.0	25166.5
W12	4192.5	6290.5	8347.5 8349.0	12427.5 12458.5	16624.5 16655.5 16686.5	22247.5 22278.5	25167.0
W13	4193.0	6291.0	8348.0 8349.5	12428.0 12459.0	16625.0 16656.0 16687.0	22248.0 22279.0	25167.5
W14	4193.5	6291.5	8348.5 8350.0	12428.5 12459.5	16625.5 16656.5 16687.5	22248.5 22280.0	25168.0
W15	4194.0	6292.0	8349.0 8350.5	12429.0 12460.0	16626.0 16657.0 16688.0	22249.0 22281.0	25168.5
W16	4194.5	6292.5	8349.5 8351.0	12429.5 12460.5	16626.5 16657.5 16688.5	22249.5 22281.5	25169.0
W17	4195.0	6293.0	8350.0 8351.5	12430.0 12461.0	16627.0 16658.0 16689.0	22250.0 22282.0	25169.5
W18	4195.5	6293.5	8350.5 8352.0	12430.5 12461.5	16627.5 16658.5 16689.5	22250.5 22282.5	25170.0
W19	4196.0	6294.0	8351.0 8352.5	12431.0 12462.0	16628.0 16659.0 16690.0	22251.0 22283.0	25170.5
W20	4196.5	6294.5	8351.5 8353.0	12431.5 12462.5	16628.5 16659.5 16690.5	22251.5 22283.5	25171.0
W21	4197.0	6295.0	8352.0 8353.5	12432.0 12463.0	16629.0 16660.0 16691.0	22252.0 22284.0	25171.5
W22	4197.5	6295.5	8352.5 8354.0	12432.5 12463.5	16629.5 16660.5 16691.5	22252.5 22284.5	25172.0
W23	4198.0	6296.0	8353.0 8354.5	12433.0 12464.0	16630.0 16661.0 16692.0	22253.0 22285.0	25172.5
W24	4198.5	6296.5	8353.5 8355.0	12433.5 12464.5	16630.5 16661.5 16692.5	22253.5 22285.5	25173.0

SHIP MORSE WORKING FREQUENCIES (kHz)—Continued

W25	4199.0	6297.0	8354.0 8355.5	12434.0 12465.0	16628.0 16631.0 16662.0 16628.5	22254.0 22247.5	25163.5
W26	4199.5	6297.5	8354.5 8356.0	12434.5 12465.5	16631.5 16662.5 16629.0	22254.5 22248.0	25164.0
W27	4200.0	6298.0	8355.0 8356.5	12435.0 12466.0	16632.0 16663.0 16629.5	22255.0 22248.5	25164.5
W28	4200.5	6298.5	8355.5 8357.0	12435.5 12466.5	16632.5 16663.5 16630.0	22255.5 22249.0	25165.0
W29	4201.0	6299.0	8356.0 8357.5	12436.0 12467.0	16633.0 16664.0 16630.5	22256.0 22249.5	25165.5
W30	4201.5	6299.5	8356.5 8359.0	12436.5 12467.5	16633.5 16664.5 16631.0	22256.5 22250.0	25166.0
W31	4202.0	6300.0	8357.0 8358.5	12437.0 12468.0	16634.0 16665.0 16631.5	22257.0 22250.5	25166.5
W32	4202.0	6300.0	8357.5 8359.0	12437.5 12468.5	16634.5 16665.5 16632.0	22257.5 22251.0	25167.0
W33	4201.5	6299.5	8358.0 8359.5	12438.0 12469.0	16635.0 16666.0 16632.5	22258.0 22251.5	25167.5
W34	4201.0	6299.0	8358.5 8360.0	12438.5 12469.5	16635.5 16666.5 16633.0	22258.5 22252.0	25168.0
W35	4200.5	6298.5	8359.0 8360.5	12439.0 12470.0	16636.0 16667.0 16633.5	22259.0 22252.5	25168.5
W36	4200.0	6298.0	8359.5 8361.0	12439.5 12470.5	16636.5 16667.5 16634.0	22259.5 22253.0	25169.0
W37	4199.5	6297.5	8360.0 8361.5	12440.0 12471.0	16637.0 16668.0 16634.5	22260.0 22253.5	25169.5
W38	4199.0	6297.0	8360.5 8362.0	12440.5 12471.5	16637.5 16668.5 16635.0	22260.5 22254.0	25170.0
W39	4198.5	6296.5	8361.0 8362.5	12441.0 12472.0	16638.0 16669.0 16635.5	22261.0 22254.5	25170.5
W40	4198.0	6296.0	8361.5 8363.0	12441.5 12472.5	16638.5 16669.5 16636.0	22261.5 22255.0	25171.0
W41	4197.5	6295.5	8362.0 8363.5	12442.0 12473.0	16639.0 16670.0 16636.5	22262.0 22255.5	25161.5
W42	4197.0	6295.0	8362.5 8364.0	12442.5 12473.5	16639.5 16670.5 16637.0	22262.5 22256.0	25162.0
W43	4196.5	6294.5	8363.0 8364.5	12443.0 12474.0	16640.0 16671.0 16637.5	22263.0 22256.5	25162.5
W44	4196.0	6294.0	8363.5 8365.0	12443.5 12474.5	16640.5 16671.5 16638.0	22263.5 22257.0	25163.0
W45	4195.5	6293.5	8364.0 8365.5	12444.0 12475.0	16641.0 16672.0 16638.5	22264.0 22257.5	25163.5
W46	4195.0	6293.0	8364.5 8371.0	12444.5 12475.5	16641.5 16672.5 16639.0	22264.5 22258.0	25164.0
W47	4194.5	6292.5	8365.0 8371.5	12445.0 12476.0	16642.0 16673.0 16639.5	22265.0 22258.5	25164.5
W48	4194.0	6292.0	8365.5 8372.0	12445.5 12476.5	16642.5 16673.5 16640.0	22265.5 22259.0	25165.0
W49	4193.5	6291.5	8371.0 8372.5	12446.0 12422.0	16643.0 16674.0 16640.5	22266.0 22259.5	25165.5
W50	4193.0	6291.0	8371.5 8373.0	12446.5 12422.5	16643.5 16674.5 16641.0	22266.5 22260.0	25166.0
W51	4192.5	6290.5	8372.0 8373.5	12447.0 12423.0	16644.0 16675.0 16641.5	22267.0 22260.5	25166.5

Area	Coast Morse working frequencies (kHz)								
	100-160 kHz	405-525 kHz	2 MHz	4 MHz	6 MHz	8 MHz	12 MHz	16 MHz	22 MHz
Alaska.....									

(2) * * *

(i) * * *

(ii) Frequencies above 5 MHz may be assigned primarily to stations serving the high seas and secondarily to stations serving inland waters of the United States, including the Great Lakes, under the condition that interference will not be caused to any coast station serving the high seas. Applicants for these frequencies must submit a substantial showing of need based on the following factors:

(A) a schedule of each currently licensed Morse working frequency and the expected use of the proposed frequencies;

(B) for additional frequencies within the same MHz band, a factual showing of the 3 busiest hours of any 4 days within a consecutive 10 day period for each of the 2 months immediately preceding the filing of the application indicating that the applicant has used its currently assigned frequencies within

the same MHz band an aggregate average of at least 40% of the 3 busiest hours of each day for exchanging communications; and

(C) any other facts that support the need for the proposed assignment, e.g., evidence of radio interference by another station located near enough to render a currently licensed frequency substantially unusable.

* * * * *

6. Section 80.359 is amended by revising paragraphs (a) and (b) in their entirety to read as follows:

§ 80.359 Frequencies for digital selective calling (DSC).

(a) *General purpose calling.* The following table describes the calling frequencies for use by authorized ship and coast stations for general purpose DSC. There are three series of paired frequencies. One series is for worldwide use; the other two series are for regional use. The "Series A" designation includes

coast stations along, and ship stations in, the Atlantic Ocean, the Gulf of Mexico, and the Caribbean Sea. The "Series B" designation includes stations in any remaining areas. Stations must initiate contact on the appropriate regional frequency depending upon the location of the called station and propagation conditions.

Acknowledgement is made on the paired frequency. The worldwide frequencies may be used for international calling, if calls on the appropriate regional frequencies are unsuccessful, or the regional series does not contain the appropriate band (e.g., 2 MHz). During normal working hours, all public coast stations capable of DSC operations must monitor the worldwide and regional frequencies appropriate for its location. The specific frequencies to be monitored will vary with propagation conditions.

GENERAL PURPOSE DSC

[In kHz unless otherwise noted]

Worldwide		Series A		Series B	
Ship	Coast	Ship	Coast	Ship	Coast
458.5	455.5				
2189.5	* 2177.0				
4208.0	4219.5	4208.5	4220.04209.0	4209.5	4220.5
6312.5	6331.0	6313.0	6331.5	6313.5	6320.0
8415.0	8436.5	8415.5	8437.0	8416.0	8437.5
12577.5	12657.0	12578.0	12657.5	12578.5	12658.0
16805.0	16903.0	16805.5	16903.5	16806.0	16904.0
18898.5	19703.5	18899.0	19704.0	18899.5	19704.5
22374.5	22444.0	22375.0	22444.05	22375.5	22445.0
25208.5	26121.0	25209.0	26121.5	25209.5	26122.0
* 156.525	* 156.525				

* The frequency 2177.0 kHz is also available to ship stations for intership calling and acknowledgement of such calls only.

* MHz.

(b) *Distress and safety calling.* The frequencies 2187.5 kHz, 4207.5 kHz, 6312.0 kHz, 8414.5 kHz, 12577.0 kHz, 16804.5 kHz, and 156.525 MHz may be used for DSC by coast and ship stations on a simplex basis for distress and safety purposes. The provisions and procedures for distress and safety calling are contained in CCIA

Recommendation 541 as modified by § 80.103(c) of this part.

* * * * *

7. In § 80.361, paragraphs (a) and (b) are revised in their entirety and a new paragraph (c) is added to read as follows:

§ 80.361 Frequencies for narrow-band direct-printing (NBDP) and data transmissions.

(a) *Paired channels.* (1) The following frequencies are available for assignment to public coast stations for narrow-band direct-printing (NBDP) and data transmissions. The paired ship frequencies are available for use by authorized ship stations for NBDP and data transmissions.

Ch. no.	Paired frequencies for NBDP and data transmissions (kHz)															
	4 MHz		6 MHz		8 MHz		12 MHz		16 MHz		18/19 MHz		22 MHz		25/26 MHz	
	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship
1	4210.5	4172.5	6314.5	6263.0			12579.5	12477.0	16807.0	16683.5	19681.0	18870.5	22376.5	22284.5	26101.0	25173.0
2	4211.0	4173.0	6315.0	6263.5	8417.0	8377.0	12580.0	12477.5	16807.5	16684.0	19681.5	18871.0	22377.0	22285.0	26101.5	25173.5
3	4211.5	4173.5	6315.5	6264.0	8417.5	8377.5	12580.5	12478.0	16808.0	16684.5	19682.0	18871.5	22377.5	22285.5	26102.0	25174.0
4	4212.0	4174.0	6316.0	6264.5	8418.0	8378.0	12581.0	12478.5	16808.5	16685.0	19682.5	18872.0	22378.0	22286.0	26102.5	25174.5
5	4212.5	4174.5	6316.5	6265.0	8418.5	8378.5	12581.5	12479.0	16809.0	16685.5	19683.0	18872.5	22378.5	22286.5	26103.0	25175.0
6	4213.0	4175.0	6317.0	6265.5	8419.0	8379.0	12582.0	12479.5	16809.5	16686.0	19683.5	18873.0	22379.0	22287.0	26103.5	25175.5
7	4213.5	4175.5	6317.5	6266.0	8419.5	8379.5	12582.5	12480.0	16810.0	16686.5	19684.0	18873.5	22379.5	22287.5	26104.0	25176.0
8	4214.0	4176.0	6318.0	6266.5	8420.0	8380.0	12583.0	12480.5	16810.5	16687.0	19684.5	18874.0	22380.0	22288.0	26104.5	25176.5
9	4214.5	4176.5	6318.5	6267.0	8420.5	8380.5	12583.5	12481.0	16811.0	16687.5	19685.0	18874.5	22380.5	22288.5	26105.0	25177.0
10	4215.0	4177.0	6319.0	6267.5	8421.0	8381.0	12584.0	12481.5	16811.5	16688.0	19685.5	18875.0	22381.0	22289.0	26105.5	25177.5
11					8421.5	8381.5	12584.5	12482.0	16812.0	16688.5	19686.0	18875.5	22381.5	22289.5	26106.0	25178.0
12	4215.5	4176.0	6319.5	6268.5	8422.0	8382.0	12585.0	12482.5	16812.5	16689.0	19686.5	18876.0	22382.0	22290.0	26106.5	25178.5
13	4216.0	4176.5	6320.0	6269.0	8422.5	8382.5	12585.5	12483.0	16813.0	16689.5	19687.0	18876.5	22382.5	22290.5	26107.0	25179.0
14	4216.5	4177.0	6320.5	6269.5	8423.0	8383.0	12586.0	12483.5	16813.5	16690.0	19687.5	18877.0	22383.0	22291.0	26107.5	25179.5
15	4217.0	4177.5	6321.0	6270.0	8423.5	8383.5	12586.5	12484.0	16814.0	16690.5	19688.0	18877.5	22383.5	22291.5	26108.0	25180.0
16	4217.5	4180.0	6321.5	6270.5	8424.0	8384.0	12587.0	12484.5	16814.5	16691.0	19688.5	18878.0	22384.0	22292.0	26108.5	25180.5
17	4218.0	4180.5	6322.0	6271.0	8424.5	8384.5	12587.5	12485.0	16815.0	16691.5	19689.0	18878.5	22384.5	22292.5	26109.0	25181.0
18			6322.5	6271.5	8425.0	8385.0	12588.0	12485.5	16815.5	16692.0	19689.5	18879.0	22385.0	22293.0	26109.5	25181.5
19			6323.0	6272.0	8425.5	8385.5	12588.5	12486.0	16816.0	16692.5	19690.0	18879.5	22385.5	22293.5	26110.0	25182.0
20			6323.5	6272.5	8426.0	8386.0	12589.0	12486.5	16816.5	16693.0	19690.5	18880.0	22386.0	22294.0	26110.5	25182.5
21			6324.0	6273.0	8426.5	8386.5	12589.5	12487.0	16817.0	16693.5	19691.0	18880.5	22386.5	22294.5		
22			6324.5	6273.5	8427.0	8387.0	12590.0	12487.5	16817.5	16694.0	19691.5	18881.0	22387.0	22295.0		
23			6325.0	6274.0	8427.5	8387.5	12590.5	12488.0	16818.0	16694.5			22387.5	22295.5		
24			6325.5	6274.5	8428.0	8388.0	12591.0	12488.5					22388.0	22296.0		
25			6326.0	6275.0	8428.5	8388.5	12591.5	12489.0	16818.5	16695.5			22388.5	22296.5		
26			6326.5	6275.5	8429.0	8389.0	12592.0	12489.5	16819.0	16696.0			22389.0	22297.0		
27			6327.0	6281.0	8429.5	8389.5	12592.5	12490.0	16819.5	16696.5			22389.5	22297.5		
28			6327.5	6281.5	8430.0	8390.0	12593.0	12490.5	16820.0	16697.0			22390.0	22298.0		
29			6328.0	6282.0	8430.5	8390.5	12593.5	12491.0	16820.5	16697.5			22390.5	22298.5		
30			8431.0		8391.0	8391.0	12594.0	12491.5	16821.0	16698.0			22391.0	22299.0		
31			8431.5		8391.5	8391.5	12594.5	12492.0	16821.5	16698.5			22391.5	22299.5		
32			8432.0		8392.0	8392.0	12595.0	12492.5	16822.0	16699.0			22392.0	22300.0		
33			8432.5		8392.5	8392.5	12595.5	12493.0	16822.5	16699.5			22392.5	22300.5		
34					8433.0	8393.0	12596.0	12493.5	16823.0	16700.0			22393.0	22301.0		
35							12596.5	12494.0	16823.5	16700.5			22393.5	22301.5		
36							12597.0	12494.5	16824.0	16701.0			22394.0	22302.0		
37							12597.5	12495.0	16824.5	16701.5			22394.5	22302.5		
38							12598.0	12495.5	16825.0	16702.0			22395.0	22303.0		
39							12598.5	12496.0	16825.5	16702.5			22395.5	22303.5		
40							12599.0	12496.5	16826.0	16703.0			22396.0	22304.0		
41							12599.5	12497.0	16826.5	16703.5			22396.5	22304.5		
42							12600.0	12497.5	16827.0	16704.0			22397.0	22305.0		
43							12600.5	12498.0	16827.5	16704.5			22397.5	22305.5		
44							12601.0	12498.5	16828.0	16705.0			22398.0	22306.0		
45							12601.5	12499.0	16828.5	16705.5			22398.5	22306.5		
46							12602.0	12499.5	16829.0	16706.0			22399.0	22307.0		
47							12602.5	12500.0	16829.5	16706.5			22399.5	22307.5		
48							12603.0	12500.5	16830.0	16707.0			22400.0	22308.0		
49							12603.5	12501.0	16830.5	16707.5			22400.5	22308.5		
50							12604.0	12501.5	16831.0	16708.0			22401.0	22309.0		
51							12604.5	12502.0	16831.5	16708.5			22401.5	22309.5		
52							12605.0	12502.5	16832.0	16709.0			22402.0	22310.0		
53							12605.5	12503.0	16832.5	16709.5			22402.5	22310.5		
54							12606.0	12503.5	16833.0	16710.0			22403.0	22311.0		
55							12606.5	12504.0	16833.5	16710.5			22403.5	22311.5		
56							12607.0	12504.5	16834.0	16711.0			22404.0	22312.0		
57							12607.5	12505.0	16834.5	16711.5			22404.5	22312.5		
58							12608.0	12505.5	16835.0	16712.0			22405.0	22313.0		
59							12608.5	12506.0	16835.5	16712.5			22405.5	22313.5		
60							12609.0	12506.5	16836.0	16713.0			22406.0	22314.0		
61							12609.5	12507.0	16836.5	16713.5			22406.5	22314.5		
62							12610.0	12507.5	16837.0	16714.0			22407.0	22315.0		
63							12610.5	12508.0	16837.5	16714.5			22407.5	22315.5		
64							12611.0	12508.5	16838.0	16715.0			22408.0	22316.0		
65							12611.5	12509.0	16838.5	16715.5			22408.5	22316.5		
66							12612.0	12509.5	16839.0	16716.0			22409.0	22317.0		
67							12612.5	12510.0	16839.5	16716.5			22409.5	22317.5		
68							12613.0	12510.5	16840.0	16717.0			22410.0	22318.0		
69							12613.5	12511.0	16840.5	16717.5			22410.5	22318.5		
70							12614.0	12511.5	16841.0	16718.0			22411.0	22319.0		
71							12614.5	12512.0	16841.5	16718.5			22411.5	22319.5		
72							12615.0	12512.5	16842.0	16719.0			22412.0	22320.0		
73							12615.5	12513.0	16842.5	16719.5			22412.5	22320.5		
74							12616.0	12513.5	16843.0	16720.0			22413.0	22321.0		
75							12616.5	12514.0	16843.5	16720.5			22413.5	22321.5		
76							12617.0	12514.5	16844.0	16721.0			22414.0	22322.0		
77							12617.5	12515.0	16844.5	16721.5			22414.5	22322.5		
78							12618.0	12515.5	16845.0	16722.0			22415.0	22323.0		

Ch. no.	Paired frequencies for NBDP and data transmissions (kHz)															
	4 MHz		6 MHz		8 MHz		12 MHz		16 MHz		18/19 MHz		22 MHz		25/26 MHz	
	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship	Coast	Ship
79.....							12618.5	12516.0	16845.5	16722.5			22415.5	22323.5		
80.....							12619.0	12516.5	16846.0	16723.0			22416.0	22324.0		
81.....							12619.5	12517.0	16846.5	16723.5			22416.5	22324.5		
82.....							12620.0	12517.5	16847.0	16724.0			22417.0	22325.0		
83.....							12620.5	12518.0	16847.5	16724.5			22417.5	22325.5		
84.....							12621.0	12518.5	16848.0	16725.0			22418.0	22326.0		
85.....							12621.5	12519.0	16848.5	16725.5			22418.5	22326.5		
86.....							12622.0	12519.5	16849.0	16726.0			22419.0	22327.0		
87.....									16849.5	16726.5			22419.5	22327.5		
88.....							12622.5	12520.5	16850.0	16727.0			22420.0	22328.0		
89.....							12623.0	12521.0	16850.5	16727.5			22420.5	22328.5		
90.....							12623.5	12521.5	16851.0	16728.0			22421.0	22329.0		
91.....							12624.0	12522.0	16851.5	16728.5			22421.5	22329.5		
92.....							12624.5	12522.5	16852.0	16729.0			22422.0	22330.0		
93.....							12625.0	12523.0	16852.5	16729.5			22422.5	22330.5		
94.....							12625.5	12523.5	16853.0	16730.0			22423.0	22331.0		
95.....							12626.0	12524.0	16853.5	16730.5			22423.5	22331.5		
96.....							12626.5	12524.5	16854.0	16731.0			22424.0	22332.0		
97.....							12627.0	12525.0	16854.5	16731.5			22424.5	22332.5		
98.....							12627.5	12525.5	16855.0	16732.0			22425.0	22333.0		
99.....							12628.0	12526.0	16855.5	16732.5			22425.5	22333.5		
100.....							12628.5	12526.5	16856.0	16733.0			22426.0	22334.0		
101.....							12629.0	12527.0	16856.5	16733.5			22426.5	22334.5		
102.....							12629.5	12527.5	16857.0	16739.0						
103.....							12630.0	12528.0	16857.5	16739.5						
104.....							12630.5	12528.5	16858.0	16740.0						
105.....							12631.0	12529.0	16858.5	16740.5						
106.....							12631.5	12529.5	16859.0	16741.0						
107.....							12632.0	12530.0	16859.5	16741.5						
108.....									16860.0	16742.0						
109.....									16860.5	16742.5						
110.....									16861.0	16743.0						
111.....									16861.5	16743.5						
112.....									16862.0	16744.0						
113.....									16862.5	16744.5						
114.....									16863.0	16745.0						
115.....									16863.5	16745.5						
116.....									16864.0	16746.0						
117.....									16864.5	16746.5						
118.....									16865.0	16747.0						
119.....									16865.5	16747.5						
120.....									16866.0	16748.0						
121.....									16866.5	16748.5						
122.....									16867.0	16749.0						
123.....									16867.5	16749.5						
124.....									16868.0	16750.0						
125.....									16868.5	16750.5						
126.....									16869.0	16751.0						
127.....									16869.5	16751.5						
128.....									16870.0	16752.0						
129.....									16870.5	16752.5						
130.....									16871.0	16753.0						
131.....									16871.5	16753.5						
132.....									16872.0	16754.0						

(2) Applicants for these frequencies must submit a substantial showing of need based on the following factors:

(i) a schedule of each currently licensed NBDP frequency and the expected use of the proposed frequencies;

(ii) for additional frequencies within the same MHz band, a factual showing of the 3 busiest hours of any 4 days within a consecutive 10 day period for

each of the 2 months immediately preceding the filing of the application indicating that the applicant has used its currently assigned frequencies within the same MHz band an aggregate average of at least 40% of the 3 busiest hours of each day for exchanging communications; and

(iii) any other facts that support the need for the proposed assignment, e.g., evidence of radio interference by

another station located near enough to render a currently licensed frequency substantially unusable.

(b) *Non-paired channels.* The following frequencies are available for use by authorized ship stations for NBDP and data transmissions with public coast stations. Public coast stations may receive only on these frequencies.

NON-PAIRED NBDP CHANNELS (kHz)

Channel series:									
1.....		4202.5	6300.5	8396.5	12560.0	16785.0	18893.0	22352.0	25193.0
2.....		4203.0	6301.0	8397.0	12560.5	16785.5	18893.5	22352.5	25193.5

NON-PAIRED NBDP CHANNELS (kHz)—Continued

3	4203.5	6301.5	8397.5	12561.0	16786.0	18894.0	22353.0	25194.0
4	4204.0	6302.0	8398.0	12561.5	16786.5	18894.5	22353.5	25194.5
5	4204.5	6302.5	8398.5	12562.0	16787.0	18895.0	22354.0	25195.0
6	4205.0	6303.0	8399.0	12562.5	16787.5	18895.5	22354.5	25195.5
7	4205.5	6303.5	8399.5	12563.0	16788.0	18896.0	22355.0	25196.0
8	4206.0	6304.0	8400.0	12563.5	16788.5	18896.5	22355.5	25196.5
9	4206.5	6304.5	8400.5	12564.0	16789.0	18897.0	22356.0	25197.0
10	4207.0	6305.0	8401.0	12564.5	16789.5	18897.5	22356.5	25197.5
11		6305.5	8401.5	12565.0	16790.0	18898.0	22357.0	25198.0
12		6306.0	8402.0	12565.5	16790.5		22357.5	25198.5
13		6306.5	8402.5	12566.0	16791.0		22358.0	25199.0
14		6307.0	8403.0	12566.5	16791.5		22358.5	25199.5
15		6307.5	8403.5	12567.0	16792.0		22359.0	25200.0
16		6308.0	8404.0	12567.5	16792.5		22359.5	25200.5
17		6308.5	8404.5	12568.0	16793.0		22360.0	25201.0
18		6309.0	8405.0	12568.5	16793.5		22360.5	25201.5
19		6309.5	8405.5	12569.0	16794.0		22361.0	25202.0
20		6310.0	8406.0	12569.5	16794.5		22361.5	25202.5
21		6310.5	8406.5	12570.0	16795.0		22362.0	25203.0
22		6311.0	8407.0	12570.5	16795.5		22362.5	25203.5
23		6311.5	8407.5	12571.0	16796.0		22363.0	25204.0
24			8408.0	12571.5	16796.5		22363.5	25204.5
25			8408.5	12572.0	16797.0		22364.0	25205.0
26			8409.0	12572.5	16797.5		22364.5	25205.5
27			8409.5	12573.0	16798.0		22365.0	25206.0
28			8410.0	12573.5	16798.5		22365.5	25206.5
29			8410.5	12574.0	16799.0		22366.0	25207.0
30			8411.0	12574.5	16799.5		22366.5	25207.5
31			8411.5	12575.0	16800.0		22367.0	25208.0
32			8412.0	12575.5	16800.5		22367.5	
33			8412.5	12576.0	16801.0		22368.0	
34			8413.0	12576.5	16801.5		22368.5	
35			8413.5		16802.0		22369.0	
36			8414.0		16802.5		22369.5	
37					16803.0		22370.0	
38					16803.5		22370.5	
39					16804.0		22371.0	
40							22371.5	
41							22372.0	
42							22372.5	
43							22373.0	
44							22373.5	
45							22374.0	

(c) *Distress and calling.* The frequencies 2174.5 kHz, 4177.5 kHz, 6268.0 kHz, 8376.5 kHz, 12520.0 kHz, and 16695.0 kHz may be used for NBDP and data transmissions by coast and ship

stations on a simplex basis for distress and safety purposes.

8. In § 80.363, paragraphs (a) and (b) are revised in their entirety to read as follows:

§ 80.363 Frequencies for facsimile.

* * * * *

(a) *Ship station frequencies.* The following frequencies are available for use by authorized ship stations for facsimile.

ASSIGNABLE SHIP FREQUENCIES FOR FACSIMILE (kHz)

2070.5	4154.5	6235.5	8302.5	12370.5	16551.5	18847.5	22181.5	25123.5
2072.5	4169.5	6259.5	8338.5	12418.5	16614.5	18868.5	22238.5	25159.5
2074.5								
2076.5								

(b) *Coast station frequencies.* The following table describes the exclusive maritime mobile HF frequency bands that are available for assignment to coast stations using 3 kHz channels for facsimile. However, any frequency in the 2000–27500 kHz bands listed in Part 2 of the Commission's Rules as available for shared use by the maritime mobile service and other radio services, except for the 4000–4063 kHz and the 8100–8195 kHz bands, is available for assignment to coast stations for facsimile.

Frequency assignments are subject to coordination with government users.

FREQUENCY BANDS FOR COAST FACSIMILE (kHz)

4221.0–4351.0	16904.5–17242.0
6332.5–6501.0	19705.0–19755.0
8438.0–8707.0	22445.5–22696.0
12658.5–13077.0	26122.5–26145.0

* * * * *

9. In § 80.369, paragraphs (b) and (d) are revised to read as follows:

§ 80.369 Distress, urgency, safety, call and reply frequencies.

* * * * *

(b) The frequencies 4125.0 kHz, 6215 kHz, 8291 kHz, 12290 kHz, and 16420 kHz may be used by coast and ship stations on a simplex basis for distress and safety communications. The frequency 4125.0 kHz may also be used for distress and safety communications

between aircraft and maritime mobile stations.

(d) In the 4000-27500 kHz band, the following coast frequencies are available for assignment to public coast stations for call and reply communications. The paired ship frequencies are available for use by authorized ship stations.

CALL AND REPLY FREQUENCY PAIRS IN THE 4000-27500 KHz

Carrier Frequencies (kHz)		
Channel No.	Ship transmit	Coast transmit
421.....	¹²³ 4125	¹ 4417
606.....	²³ 6215	¹ 6516
821.....	8255	8779
1221.....	³ 12290	13137
1621.....	³ 16420	17302
1806.....	18795	19770
2221.....	22060	22756
2510.....	25097	26172

¹ The frequencies 4125 kHz, 4417 kHz, and 6516 kHz are also available on a simplex basis for private communications, see § 80.373(c) of this part.

² The frequencies of 4125 kHz and 6215 kHz are also available on a simplex basis to ship and coast stations for call and reply, provided that the peak envelope power does not exceed 1 kW.

³ The frequencies 4125 kHz, 6215 kHz, 8291 kHz, 12290 kHz, and 16420 kHz are also available on a simplex basis for distress and safety traffic, see paragraph (b) of this section.

10. In § 80.371, paragraphs (b) and (d) are revised in their entirety to read as follows:

§ 80.371 Public correspondence frequencies.

(b) *Working frequencies in the 4000-25700 kHz band.* This paragraph describes the working carrier frequencies in the 4000-27500 kHz band.

(1) The following table specifies the carrier frequencies available for assignment to public coast stations. The paired ship frequencies are available for use by authorized ship stations.

TABLE A.—PUBLIC CORRESPONDENCE (DUPLEX CHANNELS)

[Working carrier frequency pairs in the 4000-27500 kHz band]

Region	Channel No.	Carrier frequencies (kHz)	
		Ship transmit	Coast transmit
East Coast.....	403	4071.0	4363.0
	410	4092.0	4384.0
	411	4095.0	4387.0
	412	4098.0	4390.0
	416	4110.0	4402.0
	417	4113.0	4405.0
	422	4128.0	4420.0
	423	4131.0	4423.0
	802	8198.0	8722.0
	805	8207.0	8731.0
	808	8216.0	8740.0
	810	8222.0	8746.0
	811	8225.0	8749.0
	814	8234.0	8758.0
	815	8237.0	8761.0
	825	8267.0	8791.0
	826	8270.0	8794.0
	831	8285.0	8809.0
	1203	12236.0	13083.0
	1206	12245.0	13092.0
	1208	12251.0	13098.0
	1209	12254.0	13101.0
	1210	12257.0	13104.0
	1211	12260.0	13107.0
	1215	12272.0	13119.0
	1222	12293.0	13140.0
	1223	12296.0	13143.0
	1228	12311.0	13158.0
	1230	12317.0	13164.0
	1601	16360.0	17242.0
	1605	16372.0	17254.0
	1609	16384.0	17266.0
	1610	16387.0	17269.0
	1611	16390.0	17272.0
	1616	16405.0	17287.0
	1620	16417.0	17299.0
	1626	16435.0	17317.0
	1631	16450.0	17332.0
	2201	22000.0	22696.0
	2205	22012.0	22708.0
	2210	22027.0	22723.0
	2215	22042.0	22738.0
	2216	22045.0	22741.0
	2222	22063.0	22759.0
	2236	22105.0	22801.0
West Coast.....	401	4065.0	4357.0
	416	4110.0	4402.0
	417	4113.0	4405.0
	804	8204.0	8728.0
	809	8219.0	8743.0
	814	8234.0	8758.0
	1201	12230.0	13077.0
	1202	12233.0	13080.0
	1203	12236.0	13083.0
	1229	12314.0	13161.0
	1230	12317.0	13164.0
	1602	16363.0	17245.0
	1603	16366.0	17248.0
	1624	16429.0	17311.0
	2214	22039.0	22735.0
	2223	22066.0	22762.0
	2228	22081.0	22777.0

TABLE A.—PUBLIC CORRESPONDENCE (DUPLEX CHANNELS)—Continued

[Working carrier frequency pairs in the 4000-27500 kHz band]

Region	Channel No.	Carrier frequencies (kHz)	
		Ship transmit	Coast transmit
Gulf Coast.....	2236	22105.0	22801.0
	404	4074.0	4366.0
	405	4077.0	4369.0
	414	4104.0	4396.0
	419	4119.0	4411.0
	824	8264.0	8788.0
	829	8279.0	8803.0
	830	8282.0	8806.0
	1212	12263.0	13110.0
	1225	12302.0	13149.0
	1226	12305.0	13152.0
	1607	16378.0	17260.0
	1632	16453.0	17335.0
	1641	16480.0	17362.0
Great Lakes.....	2227	22078.0	22774.0
	2231	22090.0	22786.0
	2237	22108.0	22804.0
	405	4077.0	4369.0
	409	4089.0	4381.0
Hawaii.....	418	4116.0	4408.0
	826	8270.0	8794.0
	418	4116.0	4408.0
	808	8216.0	8740.0
Caribbean.....	1222	12293.0	13140.0
	1601	16360.0	17242.0
	604	6209.0	6510.0
	605	6212.0	6513.0
	1602	16363.0	17245.0
	1603	16366.0	17248.0
	2223	22066.0	22762.0

(2) The following table specifies the additional carrier frequencies available for assignment to public coast stations for public correspondence. The paired ship frequencies are available for use by authorized ship stations. The specific frequency assignment available to public coast stations for a particular geographic area is indicated by an "x" under the appropriate column. Table B is based on the initial Appendix 25 Allotment Arrangement published by the International Frequency Registration Board (IFRB) (see IFRB Circular-letter No. 836, dated September 28, 1990). The allotment areas are in accordance with the "Standard Defined Areas" as identified in the Appendix 25 Planning System and indicated in the Preface to the International Frequency List (IFL) (see IFRB Circular-letter No. 843, dated October 31, 1990).

TABLE B.—PUBLIC CORRESPONDENCE (ADDITIONAL DUPLEX CHANNELS)

[Working carrier frequency pairs in the 4000–27500 kHz band]

Channel	Ship transmit	Coast transmit	USA-E	USA-W	USA-S	USA-C	VIR	HWA	ALS	PTR	GUM
Carrier frequencies (kHz)											
427	4143.0	4435.0	x	x	x	x	x	x	x	—	x
428	4060.0	4351.0	x	x	x	x	x	x	x	x	x
607	6218.0	6519.0	x	x	x	x	x	x	x	x	x
836	8113.0	8713.0	x	x	x	x	x	x	x	x	x
837	8128.0	8716.0	x	x	x	x	x	x	x	x	x
1233	12326.0	13173.0	x	x	x	x	x	x	x	x	x
1234	12329.0	13176.0	—	x	x	—	—	x	x	—	x
1235	12332.0	13179.0	x	x	x	x	x	x	x	x	x
1236	12335.0	13182.0	—	x	x	—	—	x	—	—	—
1237	12338.0	13185.0	x	—	x	x	x	—	—	x	—
1642	16483.0	17365.0	x	x	x	x	x	x	x	x	x
1643	16486.0	17368.0	x	x	x	x	x	x	x	x	x
1644	16489.0	17371.0	x	x	x	x	—	x	x	—	x
1645	16492.0	17374.0	x	x	x	x	x	x	x	x	x
1646	16495.0	17377.0	—	x	—	—	—	—	—	—	—
1647	16498.0	17380.0	x	x	x	x	—	x	x	—	x
1648	16501.0	17383.0	—	x	—	x	x	x	x	x	x
1801	18780.0	19755.0	x	x	x	x	x	x	x	x	x
1802	18783.0	19758.0	x	—	x	x	x	—	—	x	—
1803	18786.0	19761.0	x	x	—	x	x	x	x	x	x
1804	18789.0	19764.0	—	x	x	—	—	x	x	—	—
1805	18792.0	19767.0	—	x	—	—	—	x	x	—	—
1807	18798.0	19773.0	x	x	x	x	x	x	x	x	x
1808	18801.0	19776.0	x	x	x	x	x	x	x	x	x
2241	22120.0	22816.0	x	x	x	x	x	x	x	x	x
2242	22123.0	22819.0	x	x	x	x	x	x	x	x	x
2243	22126.0	22822.0	x	x	x	x	x	x	x	x	—
2244	22129.0	22825.0	—	x	—	—	—	x	x	—	—
2245	22132.0	22828.0	—	x	x	—	—	x	x	—	—
2246	22135.0	22831.0	x	x	x	x	—	x	x	—	x
2247	22138.0	22834.0	x	x	x	x	x	x	x	—	x
2501	25070.0	26145.0	x	x	x	x	—	x	x	—	x
2502	25073.0	26148.0	x	x	x	x	x	x	x	x	—
2503	25076.0	26151.0	x	x	x	x	x	x	x	—	—
2504	25079.0	26154.0	x	x	x	x	x	x	x	x	x

(3) The following table specifies the non-paired carrier frequencies that are available for assignment to public coast stations for simplex operations subject to the provision of paragraph (b)(4) of this section. These frequencies are available for use by authorized ship stations for transmissions to coast stations (simplex operations).

Assignments on these frequencies must accept interference. They are shared with government users and are considered "common use" frequencies under the international Radio Regulations. They cannot be notified for inclusion in the Master International Frequency Register, which provides stations with interference protection, but may be listed in the international List of Coast Stations. (See Radio Regulation No. 1220 and Recommendation 304.)

PUBLIC CORRESPONDENCE (SIMPLEX)

[Non-paired radiotelephony frequencies in the 4000–27500 kHz Band¹ Carrier Frequencies (kHz)]

16537	18825	22174	25100
16540	18828	22177	25103
	18831		25106

PUBLIC CORRESPONDENCE (SIMPLEX)—Continued

[Non-paired radiotelephony frequencies in the 4000–27500 kHz Band¹ Carrier Frequencies (kHz)]

18834	25109
18837	25112

¹ Coast stations limited to a maximum transmitter power of 1 kW (PEP).

(4) Applicants for these public coast frequencies specified in this section must submit a substantial showing of need based on the following factors:

(i) a schedule of each currently licensed working frequency in the 4000–27500 kHz band and the expected use of the proposed frequencies;

(ii) for additional frequencies within the same MHz band, a factual showing of the 3 busiest hours of any 4 days within a consecutive 10 day period for each of the 2 months immediately preceding the filing of the application indicating that the applicant has used its currently assigned frequencies within the same MHz band an aggregate average of at least 40% of the 3 busiest

hours of each day for exchanging communications;

(iii) any other facts that support the need for the proposed assignment, e.g., evidence of radio interference by another station located near enough to render a currently licensed frequency substantially unusable; and

(iv) for simplex frequencies listed in paragraph (b)(3) of this section, an additional showing supporting the use of simplex rather than duplex frequencies for the proposed situation.

(d) *Working frequencies in the Mississippi River System.* The Mississippi River System includes the Mississippi River and connecting navigable waters other than the Great Lakes. The following simplex frequencies are available for assignment to public coast stations serving the Mississippi River System for radiotelephony communications. These simplex frequencies also are available for use by authorized ship stations within communication service range, whether or not the ship is operating within the confines of the Mississippi River System.

**MISSISSIPPI RIVER SYSTEM WORKING
FREQUENCIES; CARRIER FREQUENCIES
(kHz)**

2086 ¹	4085	6209	8201	12362	16543
2782	4089	6212	8213	12365	16546
	4116	6510	8725		
	4408	6513	8737		

¹ Limited to a maximum transmitter output of 150 watts (PEP).

11. In § 80.373, paragraphs (c)(1) and (i) are revised in their entirety to read as follows:

§ 80.373 Private communications frequencies.

(c) *Frequencies in the 2000-27500 kHz bands for business and operational communications.* (1) The following simplex frequencies in the 2000-27500

kHz band are available for assignment to private coast stations for business and operational radiotelephone communications. These simplex frequencies also are available for use by authorized ship stations for business and operational radiotelephone communications.

BUSINESS AND OPERATIONAL FREQUENCIES IN THE 2000-27500 KHz BAND; CARRIER FREQUENCIES (kHz)

2065.0 ^{1,2}	4146	6224	8294	12353	16528	18840	22159	25115
2079.0 ^{1,2}	4149	6227	8297	12356	16531	18843	22162	25118
2096.5 ¹	4125 ³	6230		12359	16534		22165	
3023.0 ⁴	4417 ⁵	6516					22168	
	5680 ⁴						22171	

¹ Limited to peak envelope power of 150 watts.

² The frequency 4125 kHz is also available for distress and safety, and calling and reply, see § 80.369 (b) and (d) of this part.

³ The frequencies 2065.0 kHz and 2079.0 kHz must be coordinated with Canada.

⁴ The frequencies 3023.0 kHz and 5680.0 kHz are available to private coast stations licensed to state and local governments and any scene-of-action ships for the purpose of search and rescue scene-of-action coordination including communications with any scene-of-action aircraft.

⁵ The frequency 6516 kHz is limited to daytime operations. The frequencies 4417 kHz and 6516 kHz are also available for calling and reply, see § 80.369(d) of this part.

(i) *Frequencies in the 1600-5450 kHz band for private communications in Alaska.* The following simplex frequencies are available for assignment to private fixed stations located in the State of Alaska for radiotelephony communications with ship stations. These simplex frequencies are available for use by authorized ship stations for radiotelephony communications with private fixed stations located in the State of Alaska.

**PRIVATE COMMUNICATIONS IN ALASKA
CARRIER FREQUENCIES (kHz)**

1619.0	2382.0	2563.0
1622.0	2419.0	2566.0
1643.0	2422.0	2590.0
1646.0	2427.0	2616.0
1649.0	2430.0	3258.0
1652.0	2447.0	3261.0
1705.0	2450.0	4366.0
1709.0	2479.0	4369.0
1712.0	2482.0	4396.0
2003.0	2506.0	4402.0
2006.0	2509.0	4420.0
2115.0	2512.0	4423.0
2118.0	2535.0	5167.5
2379.0	2538.0	

¹ Ship stations must limit use of 3261.0 kHz to communications over distances which cannot be reached by the use of a frequency below 2700 kHz or above 156.000 MHz.

conference of the International Telecommunications Union (ITU), the bands 4000-4063 kHz and 8100-8195 kHz are allocated on a shared primary basis between the fixed service and the maritime mobile service; see § 2.106, note US236, of the Commission's Rules. Frequency assignments in the 4000-4063 kHz and 8100-8195 kHz bands are subject to coordination with government users. Additionally, coast station assignments in the 4000-4063 kHz band deviate from international provisions. Coast station assignments in the 4000-4063 kHz band are permitted provided that harmful interference is not caused to, and must accept interference from, stations operated by other countries in accordance with the Radio Regulations (see Radio Regulation Nos. 342 and 517).

(a) Application requirements.

Applicants for public coast station frequencies described in this section must submit a substantial showing of need based on the following factors:

(1) a schedule of each currently licensed 4, 6, and 8 MHz frequency and the expected use of the proposed frequencies;

(2) for additional frequencies within the same MHz band, a factual showing of the 3 busiest hours of any 4 days within a consecutive 10 day period for each of the 2 months immediately preceding the filing of the application indicating that the applicant has used its currently assigned frequencies within the same MHz band an aggregate average of at least 40% of the 3 busiest hours of each day for exchanging communications; and

(3) any other facts that support the need for the proposed assignment, e.g., evidence of radio interference by another station located near enough to render a currently licensed frequency substantially unusable.

(b) *Frequencies in the 4000-4063 kHz band.* (1) The frequencies in the 4000-4063 kHz bands are available to ship and public coast stations for:

(i) supplementary ship-to-shore duplex operations with coast stations assigned the frequencies described in § 80.371(b) of this part;

(ii) intership simplex operations and cross-band operations;

(iii) ship-to-shore or shore-to-ship simplex operations; or

(iv) duplex operations with coast stations assigned in the band 4438-4650 kHz, as described in § 80.373(d) of this part.

(2) The following table describes the channelization of carrier frequencies in the 4000-4063 kHz band.

CARRIER FREQUENCIES (kHz)

4000	4015	4030	4045
4003	4018	4033	4048
4006	4021	4036	4051
4009	4024	4039	4054
4012	4027	4042	4057

(c) *Frequencies in the 8100-8195 kHz band.* (1) The frequencies in the 8100-8195 kHz bands are available to ship and public coast stations for:

(i) supplementary ship-to-shore duplex operations with coast stations assigned the frequencies described in § 80.371(b) of this part;

12. A new § 80.374 is added to read as follows:

§ 80.374 Special provisions for frequencies in the 4000-4063 kHz and the 8100-8195 kHz bands shared with the fixed service.

Until implementation procedures and schedules are determined by a

(ii) intership simplex operations and cross-band operations; or
(iii) ship-to-shore or shore-to-ship simplex operations.

(2) The following table describes the channelization of carrier frequencies in the 8100-8195 kHz band.

CARRIER FREQUENCIES (kHz)

8101	8137	8167
8104	8140	8170
8107	8143	8173
8110	8146	8176
8116	8149	8179
8119	8152	8182
8122	8155	8185
8125	8158	8188
8131	8161	8191
8134	8164	

[FR Doc. 91-5303 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 21 and 94

[CC Docket No. 90-216; FCC 91-36]

Channel Bandwidth; 10550-10680 MHz Band Rechannelling

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: This rulemaking order amends §§ 21.701(d) and 94.65(i) of the Rules to provide for an increase in options for channel bandwidth for two microwave services, Common Carrier Point-to-Point Microwave Service and Private Operational-Fixed Microwave Service.

EFFECTIVE DATE: April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Frank Peace, Jr., Tele: 202-634-1779.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* in CC Docket No. 90-216, FCC 91-36, Adopted February 4, 1991, and Released February 19, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch, Room 230, 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, 202-452-1422, Suite 246, 1919 M Street, NW., Washington, DC 20037.

Summary of Report and Order

1. This rulemaking order amends §§ 21.701(d) and 94.65(i) of the Rules to provide for two optional bandwidth channel pairs, 2.50 MHz and 3.75 MHz, in the 10550-10680 MHz frequency band. Such rechannelization will promote wider and more efficient utilization of

the 10550-10680 MHz segment of the radio spectrum both in terms of the number of potential users and the type of transmissions.

Ordering Clauses

2. Authority for this Rule Making is contained in sections 1, 4(i), 303(e), (f), and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 151.154(i), 303(e), 303(f), and 303(r).

3. Accordingly, *It is ordered*, That §§ 21.701(d) and 94.65(i) of the Commission's Rules and Regulations, 47 CFR 21.701(d), 94.65(i), is amended as specified below, effective thirty days from publication in the *Federal Register*. *It is further ordered* That Gen. Docket No. 90-216 is terminated.

List of Subjects

47 CFR Part 21

Frequencies, Radio.

47 CFR Part 94

Frequencies, Radio.

Rule Changes

Parts 21 and 94 of the Commission's Rules and Regulations (chapter 1 of title 47 of the Code of Federal Regulations) are amended as follows:

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

1. The authority citation for part 21 continues to read as follows:

Authority: Secs. 4 and 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 21.701 is amended by adding new paragraphs (d)(3) and (4) to read as follows:

§ 21.701 Frequencies.

* * * * *

(d) * * *

(3) 3.75 MHz authorized bandwidth channels, 65 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10551.875	10616.875
10555.625	10620.525
10559.375	10624.375
10563.125	10628.125

(4) 2.50 MHz authorized bandwidth channels, 65 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10561.250	10626.250
10563.750	10628.750

PART 94—PRIVATE OPERATIONAL FIXED MICROWAVE SERVICE

1. The authority citation for part 94 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat., as amended 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. Section 94.65 is amended by adding new paragraphs (i)(3) and (4) to read as follows:

§ 94.65 Frequencies.

* * * * *

(i) * * *

(3) 3.75 MHz authorized bandwidth channels, 65 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10551.875	10616.875
10555.625	10620.525
10559.375	10624.375
10563.125	10628.125

(4) 2.50 MHz authorized bandwidth channels, 65 MHz separation:

Transmit (receive) (MHz)	Receive (transmit) (MHz)
10561.250	10626.250
10563.750	10628.750

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5427 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 69

[CC Docket Nos. 78-72 and 80-286; FCC 90-422]

Access Charges

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The Commission has reaffirmed its decision to require the local exchange carriers to implement, in most cases, a one cent originating Carrier Common Line (CCL) charge with recovery of the remaining CCL revenue requirement through the terminating charge. The Commission issued this decision in response to petitions for reconsideration seeking a zero or one-half cent originating CCL charge. The

Commission determined that the parties seeking reconsideration had an opportunity to address the level of the originating CCL charge during the rulemaking process and that the prior decision represented a reasoned consideration of the advantages and disadvantages of alternative CCL rate structures. Thus, the Commission reaffirmed its rule adopting the one cent originating CCL rate structure.

EFFECTIVE DATE: April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Kent Nilsson, Policy and Program Planning Division, Common Carrier Bureau (202) 632-6383.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order on Reconsideration (FCC 90-422), adopted December 20, 1990, released January 30, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1114 21st Street, NW., Washington, DC, 20037, (202) 452-1422.

Summary of Report and Order

1. The Commission's access charge rules initially provided for recovery of the costs allocated to the Common Carrier Line (CCL) rate element through equal per minute originating and terminating charges. In 1986, the Commission adopted temporary measures to reduce uneconomic bypass by freezing the terminating CCL charge, and requiring that cost reductions be used solely to reduce the originating charge. Although this structure was initially scheduled to expire on December 31, 1987, the Commission deferred the implementation of equalized CCL rates through March 31, 1989. At the same time, the Commission requested comment on whether bifurcated rates (i.e., unequal originating and terminating rates) should be continued and if so, how such rates should be structured.

2. Based on the comments, the Commission adopted the *Bifurcation Order* (54 FR 6292, Feb. 9, 1989) that required, as of April 1, 1989, a one cent per minute originating CCL charge, with recovery of the remaining CCL revenue requirement through the charge for terminating traffic. The Commission also required equalization of the originating and terminating charges if use of a one cent originating CCL charge would

result in a terminating charge of less than one cent.

3. Four parties filed petitions for reconsideration of the Commission's *Bifurcation Order*. In this decision, the Commission denied the petitions for reconsideration and reaffirmed its decision to implement a one cent originating CCL charge with the remainder of the CCL revenue requirement recovered through the terminating charge, except when this would result in a terminating charge of less than one cent. In denying the petitions, the Commission concluded that the petitioners had an opportunity to address the level of the originating CCL charge during the rulemaking process. The Commission also concluded that the present rate structure represented a reasoned consideration of the advantages and disadvantages of alternative CCL structures.

Ordering Clauses

4. Accordingly it is Ordered That the petitions for reconsideration of the *Bifurcation Order* are denied, and the petitions for stay are dismissed as moot.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5428 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-587; RM-6602]

Radio Broadcasting Services; Bisbee and Green Valley, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 221C2 for Channel 221A at Green Valley, Arizona, and modifies the license of Station KQYT(FM) to specify operation on the higher powered channel, as requested by Nova Communications, L.P. Additionally, in order to accommodate the modification at Green Valley, Channel 222A is substituted for Channel 221A at Bisbee, Arizona, and the license issued to Sierra Pacific Broadcasting, Ltd. for Station KZMK(FM) is modified accordingly. See 55 FR 322, January 4, 1990. Coordinates for Channel 221C2 at Green Valley are 31-55-34 and 110-58-27. Coordinates for Channel 222A at Bisbee are 31-28-52 and 109-57-30. Since Green Valley and Bisbee are located within 320 kilometers (199 miles) of the United States-Mexico border, concurrence of the Mexican

government was received. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 15, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-587, adopted February 14, 1991, and released March 1, 1991.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Arizona, is amended by removing Channel 221A at Bisbee and adding Channel 222A, and by removing Channel 221A at Green Valley and adding Channel 221C2.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5431 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-454; RM-6339]

Radio Broadcasting Services; El Dorado, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 227C3 for Channel 227A at El Dorado, Arkansas, and modifies the permit of William J. Wynne for Station KLTW(FM), as requested, to specify operation on the higher powered channel, thereby providing that community with an additional expanded coverage area FM service. See 54 FR 43086, October 20, 1989. Coordinates

used for Channel 227C3 at El Dorado are 33-07-46 and 92-50-53. With this action, the proceeding is terminated.

EFFECTIVE DATE: April 15, 1991.

FOR FURTHER INFORMATION CONTACT:

Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-454, adopted February 14, 1991, and released March 1, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 227A and adding Channel 227C3 at El Dorado.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5430 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-526; RM-7422]

Radio Broadcasting Services; Eagle, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 300C2 to Eagle, Idaho, as that community's first local FM service at the request of Cynthia Anne Siragusa. See 55 FR 47494, November 14, 1990. Channel 300C2 can be allotted to Eagle in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 43-41-42 and West Longitude 116-21-12. With this action, this proceeding is terminated.

DATES: Effective April 15, 1991; the window period for filing applications will open on April 16, 1991, and close on May 16, 1991.

FOR FURTHER INFORMATION CONTACT:

Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-526, adopted January 31, 1991, and released March 1, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by adding Channel 300C2, Eagle.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5429 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-328; RM-6777, RM-7047]

Radio Broadcasting Services; Belvidere, NJ, Scranton and Tannersville, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WRNJ-Daytimer, allots Channel 296A to Belvidere, New Jersey, as the community's first local FM service. In addition, the Commission substitutes Channel 295A for Channel 296A at Scranton, Pennsylvania, and modifies the license of Station WEZX to specify operation on the alternate Class A frequency. At the request of the Reiter Company, the Commission dismisses its counterproposal to allot Channel 296A to Tannersville, Pennsylvania. Channel

296A can be allotted to Belvidere in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.3 kilometers (2.1 miles) north to avoid a short-spacing to Stations WKDN, Channel 295B, Camden, New Jersey, and WYCL, Channel 298B, Boyertown, Pennsylvania. The coordinates for Channel 296A at Belvidere are North Latitude 40-51-17 and West Longitude 75-04-50. Channel 295A can be allotted to Scranton in compliance with the Commission's minimum distance separation requirements and can be used at the present transmitter site of Station WEZX. The coordinates for Channel 295A at Scranton are North Latitude 41-25-41 and West Longitude 75-44-50. Canadian concurrence in the allotment of Channel 295A to Scranton has been received since the community is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATES: Effective April 15, 1991. The window period for filing applications for Channel 296A at Belvidere, New Jersey, will open on April 16, 1991, and close on May 16, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-328, adopted February 15, 1991, and released March 1, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73 [AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments under New Jersey, is amended by adding Belvidere, Channel 296A. Section 73.202(b), the FM Table of Allotments under Pennsylvania, is amended by removing Channel 296A and adding Channel 295A at Scranton.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5432 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 94

[PR Docket No. 90-5; FCC 91-55]

Private Operational-Fixed Microwave Service; Distribution of Video Entertainment Material

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action allows Operational-Fixed Microwave Service licensees to use the 6 MHz wide, point-to-point channels in the 18 GHz band to distribute video entertainment material without limiting the number of channels that may be assigned for this purpose. This action will promote competition in the video distribution marketplace by allowing alternative multichannel video providers eligible in the OFS to expand their operations and increase their market presence.

EFFECTIVE DATE: April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Karen Kincaid, Land Mobile and Microwave Division, Private Radio Bureau (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in PR Docket 90-5, FCC 91-55, adopted February 13, 1991, and released February 28, 1991.

The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this Report and Order may also be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422.

Summary of Report and Order

1. The Commission's existing rules limit the distribution of video entertainment material on frequencies in the Operational-Fixed Microwave Service (OFS) to the point-to-multipoint frequencies in the 2500 to 2690 MHz band and frequencies above 21.2 GHz. To compete effectively with traditional cable providers, however, alternative multichannel delivery systems require access to additional microwave spectrum that will permit these entities to distribute the signals they receive via

satellite to various locations. In recognition of this fact, the Commission issued the Notice 55 FR 3241 (January 31, 1990), in the instant proceeding proposing to allow OFS eligibles to use the 6 MHz wide, point-to-point frequencies in the 18 GHz band for the distribution of video entertainment material. In addition, the Commission proposed not to limit the number of channels that may be assigned at 18 GHz for this purpose.

2. After reviewing the record in this proceeding, including the comments and reply comments filed in response to the Notice, the Commission concluded that the public interest would be served by the adoption of the proposals advanced in the Notice. Specifically, the Commission noted that the proposal to permit OFS eligibles to distribute video entertainment material in the 18 GHz band, particularly when considered in conjunction with the proposal to eliminate the four-channel-per-transmitter-site limitation, will promote the public interest by encouraging competition in the video distribution marketplace. In this regard, the Commission indicated that its decision will increase the competitive potential of alternative multichannel distribution systems by responding to these operators' requests for access to spectrum that will permit them to transmit the signals they receive at an earth station at one location to other locations, or to conduct wideband transmissions between buildings, by use of a microwave link. Because of current limitations in our OFS rules, many alternative multichannel delivery systems are required to construct separate head-end facilities at each location they wish to serve. Financial constraints, zoning restrictions, terrestrial interference, satellite line-of-sight problems and building owner restrictions often preclude the installation of numerous separate head-end facilities, however, thwarting the growth of these operations and decreasing their competitive potential. The Commission stated that frequencies at 18 GHz are ideal for OFS distribution of video entertainment material from a technological standpoint because the 18 GHz band is already used for this purpose by Cable Television Relay Service (CARS) licensees.

3. The Commission also concluded that limiting OFS distribution of video entertainment material in the 18 GHz band to the 6 MHz wide, point-to-point channels is appropriate because this will foster the most efficient use of spectrum. In addition, the Commission stated, this limitation is consistent with the availability of the 6 MHz wide

channels for video distribution by CARS licensees.

4. Finally, the Commission concluded that the removal of its restriction on the number of frequencies per site that an OFS licensee may use for the delivery of video entertainment material at 18 GHz is necessary to enable alternative multichannel operators to reap any tangible benefits from their access to these frequencies. Specifically, the Commission stated that permitting OFS eligibles access to 18 GHz for the distribution of video entertainment material without removing the four-channel-per-transmitter-site limitation will do virtually nothing to improve the viability of OFS eligibles competing with cable system operators capable of offering at least fifty channels. To provide meaningful competition to cable systems, alternative multichannel operators must be able to transmit as many video channels as necessary to meet subscriber demand and to vie with competitors' offerings.

Authority Citation

5. Authority for the action taken is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

List of Subjects in 47 CFR Part 94

Private operational-fixed microwave service, Communications equipment, Reporting and record keeping requirements.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

Rule Changes

47 CFR part 94 is amended as follows:

1. The authority citation for part 94 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082, 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 94.9 is revised in its entirety to read as follows:

§ 94.9 Permissible Communications.

(a) Except as provided in paragraph (b) of this section, stations in this radio service may transmit communications as follows:

(1) On frequencies below 21,200 MHz, licensees may transmit their own communications, including the transmission of their products and information services, to their customers except that the distribution of video entertainment material to customers shall be permitted only as indicated in § 94.61(b) and subparagraph (a)(2) of this section.

(2) In the frequency bands 6425-6525 MHz, 18, 142-18,580 MHz and on frequencies above 21,200 MHz, licensees may deliver any of their own products and services to any receiving location;

(3) Licensees may transmit the communications of their parent corporation, or of another subsidiary of the same parent, or their own subsidiary where the party to be served is regularly engaged in any of the activities that constitute the basis for eligibility to use the frequencies assigned;

(4) Licensees may transmit the communications of other parties in accordance with § 94.17;

(5) Licensees may transmit emergency communications unrelated to their activities in accordance with § 94.11;

(6) Licensees may transmit communications on a commercial basis to eligible users, among different premises of a single eligible user, or from one eligible user to another as part of transmissions by Digital Termination Systems on the frequencies provided for this purpose;

(7) Licensees may transmit program material from one location to another, provided that the frequencies do not serve as the final RF link in the chain of distribution of the program material to broadcast stations;

(8) The facilities of closed circuit educational television systems that have been licensed to educational institutions may be utilized for the transmission of

program material to noncommercial educational broadcast stations, provided that the use of the facilities exclusively for carrying such program material shall be less than 50 percent of their total use during any one year of the license period, no charge either direct or indirect shall be made for such use, and licensees shall submit reports with their applications for renewals showing the breakdown of usages in terms of primary and alternate uses during each year of the license term.

(b) Stations licensed in this radio service shall not:

(1) Render a common carrier communications service of any kind.

(2) Transmit program material for use in connection with broadcasting, except as provided in subparagraphs (a)(7) and (a)(8) of this section.

(3) Be used to provide the final RF link in the chain of transmission of program material to cable television systems, multipoint distribution systems or master antenna TV systems, except in the frequency bands 6425-6525 and 18,142-18,580 MHz and on frequencies above 21,200 MHz.

3. 47 CFR 94.15 is amended by revising paragraph (g) to read as follows:

§ 94.15 Policy governing the assignment of frequencies.

(g) Except as provided in this paragraph and paragraph (h) of this

section, applicants for frequencies below 21,200 MHz are normally limited to four transmit frequencies per band per transmitter site. Applicants for frequencies above 21,200 are limited to four transmit frequencies per path per transmit location. Further, master and remote stations using frequencies listed in § 94.65(a)(1) will not normally be authorized more than four (12.5 kHz) frequencies or frequency pairs.

Licensees distributing multi-channel video entertainment material on the frequencies identified in § 94.65(j)(3) are not restricted in the number of channels or the number of paths originating from any one site they may be licensed to use for this purpose.

4. 47 CFR 94.61(b) is amended by revising the entry for the frequency band 17700 to 18580 to read as follows:

§ 94.61 Applicability.

(b) * * *

FREQUENCY BAND (MHz)

17700-18580 (6) (8) (10) (23) (27)

[FR Doc. 91-5433 Filed 3-7-91; 8:45 am]

BILLING CODE 0712-91-00

Proposed Rules

Federal Register

Vol. 56, No. 46

Friday, March 8, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR PART 1703

[Docket No. RM-91-1]

Rules Implementing the Freedom of Information Act

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) proposes the following set of regulations to discharge its responsibilities under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended. The Board is also undertaking this rulemaking in response to the decision of the United States Court of Appeals for the District of Columbia Circuit that the Board is an "agency" covered by the FOIA. *Energy Research Foundation v. Defense Nuclear Facilities Safety Board* ("ERF v. DNFSB"), 917 F.2d 581 (1990). The FOIA generally (1) establishes basic requirements regarding how the public may request access to agency records and regarding waiver or reduction of fees the agency would otherwise assess for the response to the records request, (2) establishes categories of records that are exempt for various reasons from public disclosure, and (3) establishes basic requirements on federal agencies regarding their processing of and responses to records requests and fee waiver or reduction requests. The Board invites comments from interested groups and members of the public on these proposed regulations.

DATES: To be considered, comments must be mailed or delivered to the address listed below by 5 p.m. on April 8, 1991.

ADDRESSES: Comments on the proposed regulations should be mailed or delivered to the Office of the General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. All

comments will be placed in the Board's public files and will be available for inspection between 8:30 a.m. and 4:30 p.m., Mondays through Fridays (except on legal holidays), in the Board's Public Reading Room at the same address. Comments should state prominently that they are being filed in docket No. RM-91-1.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (202) 208-6387.

SUPPLEMENTARY INFORMATION: In *ERF v. DNFSB* the D.C. Circuit held that the Board is an agency subject to the provisions of the FOIA and generally covered by the Government in the Sunshine Act, 5 U.S.C. 552b. This current rulemaking addresses the FOIA aspect of the court's decision. The Board has addressed the Sunshine Act aspect of the decision in previously proposed regulations (55 FR 53526, December 31, 1990).

The proposed rule complies with the requirements of the FOIA, as amended by the Freedom of Information Reform Act of 1986, Public Law 99-570, Title I, sections 1802, 1803, 100 Stat. 3207-48, 3207-49, to issue implementing regulations. In particular, proposed §§ 1703.106 and 1703.107 implement the Reform Act of 1986 and the Office of Management and Budget's Uniform Freedom of Information Act Fee Schedules and Guidelines, 52 FR 10012.

Other key aspects of the proposed rule are:

(1) The Board would establish, consistent with 5 U.S.C. 552, two categories of agency records in the possession of the Board: records available through the Public Reading Room (§ 1703.103(b)) and records not available through the Public Reading Room (§ 1703.105).

(2) Procedures for requesting Public Reading Room records (§ 1703.103).

(3) Procedures for filing a FOIA request (§ 1703.105).

(4) Identification, drawn directly from 5 U.S.C. 552, of the categories of agency records in the possession of the Board that are exempt from mandatory public disclosure under the FOIA (§ 1703.104).

(5) Procedures, based directly upon 5 U.S.C. 552, for processing FOIA requests, including prescribed response times (§ 1703.108).

(6) Procedures for administrative appeal of denials of FOIA record requests or requests for fee waivers or reductions (§ 1703.109).

(7) Procedures for handling requests for classified information or Unclassified Controlled Nuclear Information (UCNI).

(8) Procedures regarding requests for privileged treatment of records, including procedures for handling of FOIA requests for such records (§ 1703.111).

It is the Board's intention to implement these regulations so as to avoid any unnecessary barriers to public access to information, while also minimizing the burden on the Board's small staff. It is also the Board's hope that persons seeking information or records from the Board will consult with the Designated FOIA Officer or other Board staff before invoking the procedures in the proposed regulations. To the extent permitted by law, the Board will make records available which it is authorized to withhold under 5 U.S.C. 552 whenever it determines that such disclosure is in the public interest.

Paperwork Reduction Act Statement

The proposed rule is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) because it does not contain any information collection requirements within the meaning of 44 U.S.C. 3502(4).

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, the Board certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared. 5 U.S.C. 605(b). Whatever economic impacts may result to small entities were already considered by Congress in enacting and amending the FOIA or by OMB in promulgating the Uniform Fee Schedules and Guidelines.

List of Subjects in 10 CFR Part 1703

Freedom of information.

The Proposed Regulations

Accordingly, chapter XVII of title 10 of the Code of Federal Regulations is proposed to be amended by adding a new part 1703 to read as follows:

PART 1703—PUBLIC INFORMATION AND REQUESTS

Sec.

- 1703.101 Scope.
- 1703.102 Definitions; words denoting number, gender and tense.
- 1703.103 Requests for Board records available through the public reading room.
- 1703.104 Board records exempt from public disclosure.
- 1703.105 Requests for Board records not available through the Public Reading Room (FOIA requests).
- 1703.106 Requests for waiver or reduction of fees.
- 1703.107 Fees for record requests.
- 1703.108 Processing of FOIA requests.
- 1703.109 Procedure for appeal of denial of requests for Board records and denial of requests for fee waiver or reduction.
- 1703.110 Requests for classified records.
- 1703.111 Requests for privileged treatment of documents submitted to the Board.
- 1703.112 Computation of time.

Authority: 5 U.S.C. 552, as amended; Executive Order 12600, 3 CFR, 1987 Comp., p. 235; 42 U.S.C. 2286, 2286b(c).

§ 1703.101 Scope.

This part contains the Board's regulations implementing the Freedom of Information Act, 5 U.S.C. 552.

§ 1703.102 Definitions; words denoting number, gender and tense.

Agency record is a record in the possession and control of the Board that is associated with Board business. Agency records do not include records such as:

- (1) Publicly available books, periodicals, or other publications that are owned or copyrighted by non-federal sources;
- (2) Records solely in the possession and control of Board contractors;
- (3) Personal records in the possession of Board personnel that have not been circulated, were not required by the Board to be created or retained, and may be retained or discarded at the author's sole discretion, or records of a personal nature that are not associated with any Board business; or
- (4) Non-substantive information in the calendar or schedule books of the Chairman or Members, uncirculated except for typing or recording purposes.

Board means the Defense Nuclear Facilities Safety Board.

Chairman means the Chairman of the Board.

Designated FOIA Officer means the person designated by the Board to administer the Board's activities pursuant to the regulations in this part. The Designated FOIA Officer shall also be the Board officer having custody of or responsibility for agency records in the possession of the Board and shall be the

Board officer responsible for authorizing or denying production of records upon requests filed pursuant to § 1703.105.

General Counsel means the chief legal officer of the Board.

General Manager means the chief administrative officer of the Board.

Member means a Member of the Board.

In determining the meaning of any provision of this part, unless the context indicates otherwise: the singular includes the plural; the plural includes the singular; the present tense includes the future tense; and words of one gender include the other gender.

§ 1703.103 Requests for Board records available through the Public Reading Room.

(a) A Public Reading Room will be maintained at the Board's headquarters and will be open between 8:30 a.m. and 4:30 p.m. Mondays through Fridays, with the exception of legal holidays. Documents may be obtained in person or by written or telephonic request from the Public Reading Room by reasonably describing the records sought.

(b) The public records of the Board that are available for inspection and copying upon request in the Public Reading Room include:

- (1) The Board's rules and regulations;
- (2) Statements of policy adopted by the Board.
- (3) Board recommendations; the Secretary of Energy's response, any final decision and implementation plans regarding Board recommendations; and interested person's comments, data, views, or arguments to the Board concerning its recommendations and the Secretary of Energy's response and final decision;
- (4) Transcripts of public hearings and any Board correspondence related thereto;
- (5) Board orders, decisions, notices, and other actions in a public hearing;
- (6) Board correspondence, except that which is exempt from mandatory public disclosure under § 1703.104.
- (7) Copies of the filings, certifications, pleadings, records, briefs, orders, judgments, decrees, and mandates in court proceedings to which the Board is a party and the correspondence with the courts or clerks of court;
- (8) Those of the Board's Administrative Directives that affect members of the public;
- (9) Index of the documents identified in this section, but not including drafts thereof; and
- (10) Annual report to Congress in which the Board's operations during a past fiscal year are described.

§ 1703.104 Board records exempt from public disclosure.

The following records are exempt from public disclosure:

(a)(1) Records specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy, and

(2) Which are in fact properly classified pursuant to such Executive Order;

(b) Records related solely to the internal personnel rules and practices of an agency;

(c) Records specifically exempted from disclosure by statute, provided that such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Board;

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings,

(2) Would deprive a person of a right to a fair trial or an impartial adjudication,

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy,

(4) Could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source,

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such

disclosure could reasonably be expected to risk circumvention of the law, or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

§ 1703.105 Requests for Board records not available through the Public Reading Room (FOIA requests).

(a) Upon the request of any person, the Board shall make available for public inspection and copying any reasonably described agency record in the possession and control of the Board, but not available through the Public Reading Room, subject to the provisions of this Part. If a member of the public files a request with the Board under the FOIA for records that the Board determines are available through the Public Reading Room, the Board will treat the request under the simplified procedures of § 1703.103.

(b)(1) A person may request access to Board records that are not available through the Public Reading Room by using the following procedures:

(i) The request must be in writing and must describe the records requested to enable Board personnel to locate them with a reasonable amount of effort. Where possible, specific information regarding dates, titles, file designations, and other information which may help identify the records should be supplied by the requester, including the names and titles of any Board personnel who have been contacted regarding the request prior to the submission of the written request.

(ii) A request for all records falling within a reasonably specific and well-defined category shall be regarded as conforming to the statutory requirement that records be reasonably described. The request must enable the Board to identify and locate the records by a process that is not unreasonably burdensome or disruptive of Board operations.

(2) The request should be addressed to the Designated FOIA Officer and clearly marked "Freedom of Information Act Request." The address for such requests is: Designated FOIA Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. For purposes of calculating the time for response to the request under § 1703.106, the request shall not be deemed to have been received until it is in the possession of the Designated FOIA Officer or his delegate.

(3) The request must include:

(i) A statement by the requester of a willingness to pay the fee applicable under § 1703.107(b), or to pay that fee not to exceed a specific amount, or

(ii) A request for waiver or reduction of fees.

No request shall be deemed to have been received until the Board has received a statement of willingness to pay, as indicated in paragraph (b)(3)(i), of this section or has received and approved a request for waiver or reduction of fees.

(c) With respect to records in the files of the Board that have been obtained from other federal agencies:

(1) Where the record originated in another federal agency, the Designated FOIA Officer shall refer the request to that agency and so inform the requester, unless the originating agency agrees to direct release by the Board.

(2) Requests for Board records containing information received from another agency, or records prepared jointly by the Board and other agencies, shall be treated as requests for Board records. The Designated FOIA Officer shall, however, coordinate with the appropriate official of the other agency. The notice of determination to the requester, in the event part or all of the record is recommended for denial by the other agency, shall cite the other agency Denying Official as well as the Designated FOIA Officer if a denial by the Board is also involved.

(d) If a request does not reasonably describe the records sought, as provided in paragraph (b) of this section, the Board response shall specify the reasons why the request failed to meet those requirements and shall offer the requester the opportunity to confer with knowledgeable Board personnel in an attempt to restate the request. If additional information is needed from the requester to render records reasonably described, any restated request submitted by the requester shall be treated as an initial request for purposes of calculating the time for response under § 1703.106.

§ 1703.106 Requests for waiver or reduction of fees.

(a) The Board shall collect fees for record requests made under § 1703.105 as provided in § 1703.107(b), unless a requester submits a request in writing for a waiver or reduction of fees. The Designated FOIA Officer shall make a determination on a fee waiver or reduction request within five working days of the request coming into his possession. No determination shall be made that a fee waiver or reduction request should be denied, until the Designated FOIA Officer has consulted with the General Counsel's Office. If the determination is made that the written request for a waiver or reduction of fees does not meet the requirements of this

section, the Designated FOIA Officer shall inform the requester that the request for waiver or reduction of fees is being denied and set forth his appeal rights under § 1703.109.

(b) A person requesting the Board to waive or reduce search, review, or duplication fees shall:

(1) Describe the purpose for which the requester intends to use the requested information;

(2) Explain the extent to which the requester will extract and analyze the substantive content of the agency record;

(3) Describe the nature of the specific activity or research in which the agency records will be used and the specific qualifications the requester possesses to utilize information for the intended use in such a way that it will contribute to public understanding;

(4) Describe the likely impact of disclosure of the requested records on the public's understanding of the subject as compared to the level of understanding of the subject existing prior to disclosure;

(5) Describe the size and nature of the public to whose understanding a contribution will be made;

(6) Describe the intended means of dissemination to the general public;

(7) Indicate if public access to information will be provided free of charge or provided for an access or publication fee; and

(8) Describe any commercial or private interest the requester or any other party has in the agency records sought.

(c) The Board shall waive or reduce fees, without further specific information from the requester if, from information provided with the request for agency records made under § 1703.105, it can determine that disclosure of the information in the agency records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(d) In making a determination regarding a request for a waiver or reduction of fees, the Board shall consider the following factors:

(1) How the subject of the requested agency records concerns the operations or activities of the Government;

(2) How the disclosure of the information is likely to contribute to an understanding of Government operations or activities.

(3) If disclosure of the requested information is likely to contribute to public understanding;

(4) If disclosure is likely to contribute significantly to public understanding of Government operations or activities;

(5) If, and the extent to which, the requester has a commercial interest that would be furthered by the disclosure of the requested agency records; and

(6) If the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

§ 1703.107 Fees for record requests.

(a) Fees for records available through the Public Reading Room.

(1) With the exception of copies of transcripts of Board public hearings addressed in paragraph (a)(2) of this section, the fees charged shall be limited to costs of duplication of the requested records. The Board shall either duplicate the requested records or have them duplicated by a commercial contractor. If the Board duplicates the records, it shall not charge the requester for the associated labor costs. A schedule of fees for this duplication service shall be prescribed in accordance with paragraph (b)(7) of this section. A person may obtain a copy of the schedule of fees in person or by mail from the Public Reading Room. There shall be no charge for responses consisting of ten or fewer pages.

(2) Transcripts of Board public hearings are made by private contractors. Interested persons may obtain copies of public hearing transcripts from the contractor at prices set in the contract, or through the duplication service noted in paragraph (a), of this section, if the particular contract so permits. Copies of the transcripts shall be available for public inspection in the Public Reading Room.

(3) Requests for certification of copies of official Board records must be accompanied by a fee of \$5.00 per document. Inquiries and orders may be made to the Public Reading Room in person or by mail.

(b) Fees for records not available through the Public Reading Room (FOIA requests).

(1) *Definitions.* For the purpose of paragraph (b) of this section:

Commercial use request means a request from or on behalf of one who seeks information for a use or purpose that furthers commercial, trade, or profit interests as these phrases are commonly known or have been interpreted by the courts in the context of the FOIA;

Direct costs means those expenditures which the Board incurs in search, review and duplication, as applicable to different categories of requesters, to

respond to requests under § 1703.105. Direct costs include, for example, the average hourly salary and projected benefits costs of Board employees applied to time spent in responding to the request and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as cost of space, and heating or lighting the facility in which the Board records are stored.

Educational institution refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research;

Noncommercial scientific institution refers to an institution that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry;

Representative of the news media refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminations of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media may be included in this category. A "freelance" journalist may be regarded as working for a news organization if the journalist can demonstrate a solid basis for expecting publication through that organization, even though the journalist is not actually employed by the news organization. A publication contract would be the clearest proof, but the Board may also look to the past publication record of a requester in making this determination.

(2) *Fees.* (i) If documents are requested for commercial use, the Board shall charge the average hourly pay rate for Board employees, plus the average hourly projected benefits cost, for document search time and for document review time, and the costs of duplication as established in the schedule of fees

referenced in paragraph (b)(7) of this section.

(ii) If documents are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the Board's charges shall be limited to the direct costs of duplication as established in the schedule of fees referenced in paragraph (b)(7) of this section. There shall be no charge for the first 100 pages of duplication.

(iii) For a request not described in paragraphs (i) or (ii) of this paragraph the Board shall charge the average hourly pay rate for Board employees, plus the average hourly projected benefits cost, for document search time, and the direct costs of duplication as established in the schedule of fees referenced in paragraph (b)(7) of this section. There shall be no charge for document review time and the first 100 pages of reproduction and the first two hours of search time will be furnished without charge.

(iv) If documents are mailed, requesters shall be charged fees based on the current postage or express delivery service rates.

(v) The Board, or its designee, may establish minimum fees below which no charges will be collected, if it determines that the costs of routine collection and processing of the fees are likely to equal or exceed the amount of the fees. If total fees determined by the Board for a Freedom of Information Act request would be less than the appropriate threshold, the Board shall not charge the requesters.

(vi) Payment of fees must be by check or money order made payable to the U.S. Treasury.

(vii) Requesters may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Board reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading assessment of fees, the Board may aggregate any such requests and charge the requester accordingly. The Board shall not, however, aggregate multiple requests on unrelated subjects from a requester.

(viii) Whenever the Board estimates that duplication or search costs are likely to exceed \$25, it shall notify the requester of the estimated costs, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester an opportunity to

confer with the Board personnel with the object of reformulating the request to meet the requester's needs at a lower cost.

(3) *Fees for unsuccessful search.* The Board may assess charges for time spent searching, even if it fails to locate the records, or if records located are determined to be exempt from disclosure.

(4) *Advance payments.* (i) If the Board estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250, the Board shall notify such requester of the estimated cost and either require satisfactory assurance of full payment where the requester has a history of prompt payment of fees, or require advance payment of the charges if a requester has no payment history.

(ii) If a requester has previously failed to pay a fee charged in a timely fashion, the Board shall require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Board will begin to process a new request or a pending request from that requester.

(iii) When the Board requires advance payment under this paragraph, the administrative time limits prescribed in § 1703.108(b) will begin only after the Board has received the fee payments.

(5) *Debt collection.* The Board shall refer unpaid FOIA invoices to the General Services Administration, or other federal agency performing financial management services for the Board, for collection.

(6) *Annual adjustment of fees.* (i) Update and publication. The Board, by its designee, the General Manager, shall promulgate a schedule of fees and the average hourly pay rates and average hourly projected benefits cost and will update that schedule once every twelve months. The General Manager shall publish the schedule for public comment in the *Federal Register*.

(ii) *Payment of updated fees.* The fee applicable to a particular Freedom of Information Act request will be the fee in effect on the date that the request is received.

§ 1703.103 Processing of FOIA requests

(a) Where a request complies with § 1703.105 as to specificity and statement of willingness to pay or request for fee waiver or reduction, the Designated FOIA Officer shall acknowledge receipt of the request and commence processing of the request. The Designated FOIA Officer shall prepare a written response:

- (1) Granting the request,
- (2) Denying the request,

(3) Granting or denying it in part,

(4) Stating that the request has been referred to another agency under § 1703.105, or

(5) Informing the requester that responsive records cannot be located or do not exist.

(b) Action pursuant to this section to provide access to requested records shall be taken within ten working days of receipt of a request for Board records, as defined in § 1703.105, except that, if unusual circumstances require an extension of time before a decision on a request can be reached and the person requesting records is promptly informed in writing by the Designated FOIA Officer of the reasons for such extension and the date on which a determination is expected to be made, the Designated FOIA Officer may take an extension not to exceed ten working days. In the event of a request for fee waiver or reduction, the period for action under this paragraph begins to run from the date that the Designated FOIA Officer grants the waiver or reduction request.

(c) For purposes of this section and § 1703.109, the term "unusual circumstances" may include but is not limited to the following:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the Board's Washington, DC offices;

(ii) The need to search for, collect and appropriately examine a voluminous amount of separate and distinct records which may be responsive to a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency pursuant to § 1703.105(d).

(d) If no determination has been made at the end of the ten day period, or the last extension thereof, the requester may deem his administrative remedies to have been exhausted, giving rise to a right of review in a district court of the United States as specified in 5 U.S.C. 552(a)(4). When no determination can be made within the applicable time limit, the Board will nevertheless continue to process the request. If the Board is unable to provide a response within the statutory period, the Designated FOIA Officer shall inform the requester of the reason for the delay; the date on which a determination may be expected to be made; and that the requester can seek remedy through the courts, but ask the requester to forgo such action until a determination is made.

(e) Nothing in this part shall preclude the Designated FOIA Officer and a requester from agreeing to an extension of time for the initial determination on a

request. Any such agreement shall be confirmed in writing and shall clearly specify the total time agreed upon.

(f) The procedure for appeal of denial of a request for Board records is set forth in § 1703.109.

§ 1703.109 Procedure for appeal of denial of requests for Board records and denial of requests for fee waiver or reduction.

(a)(1) A person whose request for access to records or request for fee waiver or reduction is denied in whole or in part may appeal that determination to the General Counsel within 30 days of the determination. Appeals filed pursuant to this section must be in writing, directed to the General Counsel at the address indicated in § 1703.105(b)(2) and clearly marked "Freedom of Information Act Appeal." Such an appeal received by the Board not addressed and marked as indicated in this paragraph will be so addressed and marked by Board personnel as soon as it is properly identified and then will be forwarded to the General Counsel. Appeals taken pursuant to this paragraph will be considered to be received upon actual receipt by the General Counsel.

(2) The General Counsel shall make a determination with respect to any appeal within 20 working days after the receipt of such appeal. If, on appeal, the denial of the request for records or fee reduction is in whole or in part upheld, the General Counsel shall notify the person making such request of the provisions for judicial review of that determination.

(b) In unusual circumstances, as defined in § 1703.108(c), the time limits prescribed for deciding an appeal pursuant to this section may be extended by up to ten working days, by the General Counsel, who will send written notice to the requester setting forth the reasons for such extension and the date on which a determination or appeal is expected to be dispatched.

§ 1703.110 Requests for classified records.

The Board may at any time be in possession of classified records and Unclassified Controlled Nuclear Information (UCNI) received from the Department of Energy or other federal agencies. The Board shall refer requests under § 1703.105 for such records or information to the Department of Energy or other originating agency without making an independent determination as to the releasability of such documents. The Board shall refer requests for classified records in a manner consistent with Executive Order

12356, "National Security Information," 3 CFR, 1982 Comp., p. 166 or any superseding Executive Order. The Board shall refer requests for UCN, in a manner consistent with 42 U.S.C. 2168 and the Department of Energy's implementing regulations in 10 CFR part 1017 or any successor regulations.

§ 1703.111 Requests for privileged treatment of documents submitted to the Board.

(a) *Scope.* Any person submitting a document to the Board may request privileged treatment by claiming that some or all of the information contained in the document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act and should otherwise be withheld from public disclosure.

(b) *Procedures.* A person claiming that information is privileged under paragraph (a) of this section must file:

(1) An application, accompanied by an affidavit, requesting privileged treatment for some or all of the information in a document, and the justification for nondisclosure of the information and addressing the factors set forth in paragraph (e) of this section;

(2) The original document, boldly indicating on the front page "Contains Privileged Information—Do Not Release" and identifying within the document the information for which the privileged treatment is sought;

(3) Three copies of the redacted document (*i.e.*, without the information for which privileged treatment is sought) and with a statement indicating that information has been removed for privileged treatment;

(4) The name, title, address, telephone number, and telecopy information of the person or persons to be contacted regarding the request for privileged treatment of documents submitted to the Board.

(c) *Effect of privilege claim.* (1) The Designated FOIA Officer shall place documents for which privileged treatment is sought in accordance with paragraph (b) of this section in a nonpublic file, while the request for confidential treatment is pending. By placing documents in a nonpublic file, the Board is not making a determination on any claim for privilege. The Board retains the right to make determinations with regard to any claim of privilege, and the discretion to release information as necessary to carry out its responsibilities.

(2) The Designated FOIA Officer shall place the request for privileged treatment described in paragraph (b)(1) of this section and a copy of the redacted document described in

paragraph (b)(3) of this section in a public file, while the request for privileged treatment is pending.

(d) *Notification of request and opportunity to comment.* When a FOIA requester seeks a document for which privilege is claimed, the Designated FOIA Officer shall notify the person who submitted the document and give the person an opportunity (at least five days) in which to comment in writing on the request. A copy of this notice shall be sent to the FOIA requester.

(e) *Factors to be considered by Board.* In determining whether to grant the document privileged status and to deny the request for the document the Board shall consider:

(1) Whether the information has been held in confidence by its owner;

(2) Whether the information is of a type customarily held in confidence by its owner and whether there is a rational basis therefor;

(3) Whether the information was transmitted to and received by the Board in confidence;

(4) Whether the information is available in public sources; and

(5) Whether public disclosure of the information sought to be withheld is likely to cause substantial harm to the competitive position of the owner of the information, taking into account the value of the information to the owner; the amount of effort or money, if any, expended by the owner in developing the information; and the ease or difficulty with which the information could be properly acquired or duplicated by others.

(f) *Notification before release.* Notice of a decision by the Designated FOIA Officer, which shall be made only after consultation with the General Counsel or General Counsel's designee, to deny a claim of privilege, in whole or in part, shall be given to any person claiming that information is privileged no less than five days before public disclosure. The notice shall briefly explain why the person's objections to disclosure were not sustained by the Board. A copy of this notice shall be sent to the FOIA requester.

(g) *Notification of suit in Federal courts.* When a FOIA requester brings suit to compel disclosure of confidential commercial information, the Board shall notify the person who submitted documents containing such confidential commercial information of the suit.

§ 1703.112 Computation of time.

In computing any period of time under this Part, the day of the Board's action is not included. The last day of the period is included unless it is a Saturday,

Sunday or legal holiday, in which case the period runs until the end of the next working day. Whenever a person has the right or is required to take some action within a prescribed period after notification by the Board and the notification is made by mail, five days shall be added to the prescribed period. Only two days shall be added when a notification is made by express mail.

Dated: March 1, 1991.

John T. Conway,

Chairman.

[FR Doc. 91-5328 Filed 3-7-91; 8:45 am]

BILLING CODE 6820-KD-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-14-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require penetrant inspection and proof pressure testing of the Auxiliary Power Unit (APU) pneumatic ducts, and repair or replacement, as necessary; and a one-time stress relieving of the duct assemblies. This proposal is prompted by reports of cracked or ruptured APU pneumatic ducts which have resulted in damage to adjacent structure, pneumatic ducts, and hydraulic lines. This condition, if not corrected, could lead to failure of the APU pneumatic ducting which, in turn, could result in damage to the adjacent structure, pneumatic ducts, hydraulic lines, and/or electrical wiring.

DATES: Comments must be received no later than April 29, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-14-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport

Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. Timothy J. Dulin, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2675. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-14-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

There have been numerous reports of cracked or ruptured APU pneumatic ducting on Boeing Model 747 series airplanes. In several cases the broken ducts have caused damage to adjacent structure, pneumatic ducts, and hydraulic lines. Such duct ruptures were typically caused by cracking that initiated in and around the circumferential weld which fastens an end-flange to the duct.

Similar ruptures have occurred in the crossover pneumatic ducts and the leading edge pneumatic ducts on these airplanes. The FAA has issued AD 90-21-09, Amendment 39-6756 (55 FR 40153, October 2, 1990); AD 88-17-07, Amendment 39-5986 (53 FR 28856,

August 1, 1988); and NPRM Docket 90-NM-27-AD (55 FR 41343, October 11, 1990); each of which concern requirements for mandatory inspection and stress relieving of these ducts. The FAA has now determined that inspection and stress relieving of the APU pneumatic ducts must also be required. Cracks in the APU pneumatic ducts, if not detected and corrected, could lead to failure of these ducts, which could result in damage to the adjacent structure, pneumatic ducts, hydraulic lines, and/or electrical wiring and could affect passenger safety.

The FAA has reviewed and approved Boeing Service Bulletin 747-36-2081, dated November 29, 1990, which describes procedures for penetrant inspection of the APU pneumatic ducts; proof pressure testing; repair or replacement, as necessary; and stress relieving of the duct assemblies. The FAA has also reviewed and approved Boeing Service Bulletin 747-36-2092, dated June 28, 1990, which describes procedures for replacement of the APU pneumatic ducts in lieu of inspection and stress relieving.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require penetrant inspection and proof pressure testing of the APU pneumatic ducts, and repair or replacement, as necessary; and a one-time stress relieving of the duct assemblies; in accordance with Boeing Service Bulletin 747-36-2081, previously described. This proposal would permit operators to replace all APU pneumatic ducts in lieu of accomplishing the inspection and stress relieving procedures.

There are approximately 714 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 214 airplanes of U.S. registry would be affected by this AD, that it would take approximately 724 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$6,197,440.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, line position 2 through 734, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent damage to adjacent structure, pneumatic ducts, hydraulic lines, and/or electrical wiring as a result of failure of Auxiliary Power Unit (APU) pneumatic ducts, accomplish the following:

A. Prior to the accumulation of 7,000 flight cycles, or within the next 3,000 flight cycles after the effective date of this AD, whichever occurs later, conduct a penetrant inspection, proof pressure test, and penetrant inspection again to detect cracks or ruptures in the APU pneumatic ducts in accordance with the Accomplishment Instructions, Items A. through G., K., O., and P. of Boeing Service Bulletin 747-36-2081, dated November 29, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace in accordance with the service bulletin. The stress relieving procedure specified in Accomplishment Instructions, Items H., I., and J. of the service bulletin may be accomplished in conjunction with the penetrant inspection and proof pressure test required by this paragraph, and constitutes terminating action for the requirements of paragraph B. of this AD for all APU pneumatic ducts.

B. Prior to the accumulation of 7,000 flight cycles after the accomplishment of the initial inspection required by paragraph A. of this AD, conduct an additional penetrant inspection, proof pressure test, and penetrant inspection of the APU pneumatic ducts, and stress relieve the APU pneumatic duct assemblies, in accordance with the Accomplishment Instructions, Items A. through K., O., and P. of Boeing Service Bulletin 747-36-2081, dated November 29, 1990. If cracks or ruptures are detected, prior to further flight, repair or replace in accordance with the service bulletin.

C. Replacement of all APU pneumatic ducts in accordance with Accomplishment Instructions A., B., L. through O., and P. of Boeing Service Bulletin 747-36-2081, dated November 29, 1990; or in accordance with Boeing Service Bulletin 747-36-2092, dated June 28, 1990; constitutes terminating action for the requirements of this AD.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Seattle ACO, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Seattle ACO.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on February 27, 1991.

Darrell M. Pederson,
Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 91-5521 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-01

Federal Aviation Administration

14 CFR Part 39

[Docket No. 90-CE-48-AD]

Airworthiness Directives; Dornier 228 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice revises an earlier proposed airworthiness directive (AD) that would have required the

replacement of certain horizontal stabilizer electric trim system relays with improved relays and the modification of the connections to these relays on certain Dornier 228 series airplanes. This revision to the proposed rule provides modification procedures for those airplanes not equipped with an autopilot and/or elevator electric trim system as well as for those that are equipped with these optional installations. The actions specified by this proposed AD are intended to prevent electrical reliability reductions and assure proper functioning of the electric trim system.

DATES: Comments must be received on or before May 6, 1991.

ADDRESSES: Dornier 228 Service Bulletin (SB) SB-228-160, dated December 18, 1989, and Dornier 228 SB No. SB-228-164, Revision 1, dated August 28, 1990, that are discussed in this AD may be obtained from Dornier Luftfahrt GmbH, Product Support, P.O. Box 3, D-8031 Wessling, Federal Republic of Germany; Telephone (498153)-300; Facsimile (498153)-30.29.85. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-48-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. R. Steer, Brussels Aircraft Certification Office, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone (322)-513.38.30; or Mr. Herman Belderok, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932, ext 2710; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 90-CE-48-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would be applicable to certain Dornier 228 series airplanes was published in the Federal Register on November 9, 1990 (55 FR 47070). The proposed AD would require the replacement of the horizontal stabilizer electric system relays 4CC, 5CC, 8CC, and 9CC with improved relays and modification of the relay connections on certain Dornier 228 series airplanes in accordance with Dornier Service Bulletin No. SB-228-164, Revision 1, dated August 28, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Three commenters responded. All three commented favorably upon the AD, but stated that the failures are not limited to only those airplanes equipped with optional installations of autopilot and/or elevator electric trim coupling systems. All three recommended that airplanes that are not equipped with these optional installations be modified in accordance with the instructions in Dornier SB No. SB-228-160, dated December 18, 1989. The FAA concurs and has determined that, if the affected airplanes that are not equipped with these optional installations are modified in accordance with the instructions in Dornier SB No. SB-228-160, then the chances of relay failure and uncommanded trim motion are reduced. Therefore, the proposed AD is rewritten accordingly. Since the applicability now goes beyond the scope of the original proposal, the comment period is being reopened to provide the public an opportunity to participate in the making of this amendment.

It is estimated that 43 airplanes in the U.S. registry would be affected by the proposed AD, that it will take approximately 5 hours per airplane to accomplish the proposed actions at \$40 an hour, and that parts cost approximately \$1,017 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$52,331.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Dornier: Docket No. 90-CE-48-AD.

Applicability: Model Dornier 228-100, Dornier 228-101, Dornier 228-200, Dornier 228-201, Dornier 228-202, and Dornier 228-212 airplanes (serial numbers (S/N) 7005 through 7167, S/N 8002 through 8161, and 8163 through 8190), certificated in any category.

Compliance: Required within the next 600 hours time-in-service after the effective date of this AD, unless already accomplished.

To retain the reliability of the horizontal stabilizer electric trim system, accomplish the following:

(a) Replace relays 4CC, 5CC, 8CC, and 9CC with improved relays and modify the electrical connections of these relays in accordance with the following:

(1) For airplanes that utilize the autopilot and/or trim coupling option, perform the replacements and modification in accordance with the instructions in Dornier Service Bulletin No. SB-228-164, Revision 1, dated August 28, 1990.

(2) For airplanes that do not utilize the autopilot and the trim coupling option, perform the replacements and modification in accordance with the instructions in Dornier Service Bulletin No. SB-228-160, dated December 18, 1989.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Office, Europe, Africa and Middle East Office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Office.

(d) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Dornier Luftfahrt GmbH, Product Support, P.O. Box 3, D-8031 Wessling, Federal Republic of Germany; Telephone (498153)-300; Facsimile (498153)-30.29.85; or may examine these documents at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 21, 1991.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5519 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-CE-04-AD]

Airworthiness Directives; Dornier 228 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Dornier 228 series airplanes. This proposed action would require a one-time

modification of the alternating current (AC) electrical power supply wiring circuitry. The existing electrical system design could cause failure of both AC inverters if one malfunctioned. The action specified in the proposed AD is intended to prevent complete loss of AC electrical power.

DATES: Comments must be received on or before May 3, 1991.

ADDRESSES: Dornier Service Bulletin (SB) No. SB-228-171, dated July 20, 1990, that is discussed in this AD may be obtained from Dornier Luftfahrt GmbH, P.O. Box 3, D-8031 Wessling, Germany. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-04-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT:

Mr. R. Stoer, Program Manager, Brussels Aircraft Certification Staff, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium; Telephone 322.513.38.30 extension 2710; or Mr. Herman Belderok, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City Missouri 64106; Telephone (816) 426-6932; Facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION:

Comments invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report, summarizing each FAA-public contact concerned with the substance of this

proposal, will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-04-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The manufacturer (Dornier) of Dornier 228 series airplanes has informed the FAA of an unsafe condition that could occur on the affected airplanes. Dornier advises that the existing electrical system design of the 228 series airplanes can cause failure of both alternating current (AC) inverters if one malfunctioned, which would result in complete loss of AC electrical power. As a result, Dornier has issued Service Bulletin (SB) No. SB-228-171, dated July 20, 1990, which specifies a one-time modification of the AC electrical power supply wiring circuitry on certain Dornier 228 series airplanes.

Since this condition could exist or develop in other Dornier 228 series airplanes of the same type design that are certificated for operation in the United States, the FAA has determined that AD action is necessary to prevent complete loss of electrical power. The proposed AD would require a one-time modification of the AC electrical power supply wiring circuitry in accordance with Dornier SB No. SB-228-171, dated July 20, 1990.

It is estimated that 44 airplanes in the U.S. registry will be affected by the proposed AD, that it will take approximately 8 hours to accomplish the proposed actions at \$40 an hour, and that parts cost approximately \$170 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$21,560.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant

economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Dornier: Docket No. 91-CE-04-AD.

Applicability: Models Dornier 228-100, Dornier 228-101, Dornier 228-200, Dornier 228-201, and Dornier 228-202 airplanes (serial numbers 7000 through 7036, and 8000 through 8050), certificated in any category.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent complete loss of alternating current (AC) electrical power, accomplish the following:

(a) Modify the electrical AC power supply system in accordance with the instructions in Dornier Service Bulletin No. SB-228-171, dated July 20, 1990.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, Europe, Africa, Middle East office, FAA, c/o American Embassy, 1000 Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff.

(d) All persons affected by this directive may obtain copies of the document referred to herein upon request to Dornier Luftfahrt GmbH, P.O. Box 3, D-8031 Wessling, Germany; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on February 20, 1991.

Henry A. Armstrong,
Acting Manager, Small Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 91-5520 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-28-AD]

Airworthiness Directives; SAAB-Scania Models SF-340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to SAAB-Scania Models SF-340A and SAAB 340B series airplanes, which currently requires repetitive inspections to detect cracks in the vertical stabilizer top closure rib, and repair, if necessary. This action would require either the installation of a new thicker rib with a larger radius, or reinforcement of the old rib and replacement of the attachment angle. Accomplishment of either of these actions would terminate the current requirement for the repetitive inspections. This proposal is prompted by continued reports of fatigue cracking in the vertical stabilizer top closure rib. This condition, if not corrected, could result in jamming of the rudder.

DATES: Comments must be received no later than April 29, 1991.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 91-NM-28-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. The applicable service information may be obtained from SAAB-Scania AB, Product Support, S-581.88, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 227-2145. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: Interested persons are invited to

participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 91-NM-28 AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On July 17, 1990, the FAA issued AD 90-16-02, Amendment 39-6676 (55 FR 30904, July 30, 1990), to require repetitive inspections to detect cracks in the vertical stabilizer top closure rib, and repair, if necessary. That action was prompted by reports of fatigue cracks in the vertical stabilizer top closure rib. This condition, if not corrected, could result in jamming of the rudder.

Since issuance of that AD, SAAB has developed modifications which, when installed, will terminate the necessity for repetitive inspections. These modifications will eliminate the rib cracking and the potential for a rudder jam.

SAAB-Scania has issued Service Bulletin 340-55-023, dated October 1, 1990, which describes procedures for installation of a new thicker rib with a larger radius, or reinforcement of the old rib and replacement of the attachment angle. The Luftfartsverket (LFV), which is the airworthiness authority of Sweden, has not classified this service bulletin as mandatory. However, the LFV has issued Swedish Airworthiness Directive (SAD) No. 1-036, which mandates inspections of the subject rib, and references Service Bulletin 340-55-

023 as terminating action for the repetitive inspections.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would supersede AD 90-16-02 with a new airworthiness directive that would continue to require repetitive visual inspections to detect cracks in the vertical stabilizer top closure rib, and repair, if necessary (in accordance with SAAB Service Bulletin 340-55-022, Revision 1, dated February 27, 1990). This proposal also would require eventual replacement or reinforcement and repair of the top closure rib, in accordance with the Service Bulletin 340-55-023, which would constitute terminating action for the current repetitive inspection requirements.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive inspections. Long term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led the FAA to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed modification requirement is in consonance with that policy decision.

It is estimated that 108 airplanes of U.S. registry would be affected by this AD, that it would take approximately 16 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. The estimated cost for required parts is \$1,400. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$220,320.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive

Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding Amendment 39-6676 (55 FR 30904, July 30, 1990), AD 90-16-02, with the following new airworthiness directive:

SAAB-Scania: Applies to Model SF-340A series airplanes, Serial Numbers 031 through 159; and SAAB 340B series airplanes, Serial Numbers 160 through 186; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent inhibited airplane rudder control due to cracking in the vertical stabilizer top closure rib, accomplish the following:

A. Prior to the accumulation of 500 hours time-in-service since new or within 100 hours time-in-service after August 30, 1990 (the effective date of Amendment 39-6676, AD 90-16-02), whichever occurs later, inspect the vertical stabilizer top closure rib for evidence of cracking, in accordance with SAAB Service Bulletin 340-55-022, Revision 1, dated February 27, 1990.

B. If no evidence of cracking is found, reinspect the vertical stabilizer top closure rib for cracking at intervals not to exceed 500 flight hours time-in-service.

C. If cracking is found, prior to further flight, stop drill the ends of the cracks, blend, clean, and apply aluminum tape, as specified in SAAB Service Bulletin 340-55-022, Revision 1, dated February 27, 1990. Reinspect for additional cracking and the condition of the aluminum tape at intervals not to exceed 100 hours time-in-service.

D. Within one year after the effective date of this amendment, either replace the rib with

a new thicker rib with a larger radius, or reinforce the rib and replace the attachment angle, in accordance with SAAB Service Bulletin 340-55-023, dated October 1, 1990. Accomplishment of either of these modifications constitutes terminating action for repetitive inspections required by paragraphs B. and C. of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

Note: The request should be submitted directly to the Manager, Standardization Branch, ANM-113, and a copy sent to the cognizant FAA Principal Inspector (PI). The PI will then forward comments or concurrence to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania AB, Product Support, S-581.88, Linköping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

Issued in Renton, Washington, on February 27, 1991.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5522 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-CE-07-AD]

Airworthiness Directives; Wytownia Sprzetu Komunikacyjnego PZL-Mielec Model M18 (Dromader) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Wytownia Sprzetu Komunikacyjnego PZL-Mielec Model M18 (Dromader) airplanes. This proposed action would require modification of the electro-hydraulic control system and replacement of the associated hydraulic hoses. There have been reports of these hydraulic hoses cracking. The actions specified in this proposed AD are intended to prevent failure of the electro-hydraulic control system that results in loss of flap and brake control. **DATES:** Comments must be received on or before April 29, 1991.

ADDRESSES: PZL-Mielec Mandatory Engineering Bulletin (MEB) No. K/02.141/90, dated April 1990 that is discussed in the proposed AD, may be obtained from PZL-Mielec, Ludowego Wojska Polkiego 3, 39-300 Mielec, Poland. This information also may be examined at the Rules Docket at the address below. Send comments on the proposal in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-07-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Mittag, Flight Test Pilot, Brussels Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000, Brussels, Belgium; Telephone 322 513-3830, Ext 2716; or Mr. Richard Yotter, Supervising Aerospace Engineer, Small Airplane Directorate, Aircraft Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426-6932.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-CE-07-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The Central Administration of Civil Aviation (CACA), which is the airworthiness authority for Poland, recently notified the FAA that an unsafe condition may exist on Wytownia Sprzetu Komunikacyjnego PZL-Mielec Model M18 (Dromader) airplanes equipped with an agricultural electro-hydraulic control system (Modification D73.701.00.1). The CACA advises that failures in the electro-hydraulic control system and associated hydraulic hoses have led to loss of flap and brake control on the affected airplanes. The manufacturer has issued MEB No. K/02.141/90, dated April 1990, which specifies modification of the electro-hydraulic control system and replacement of the associated hydraulic hoses. The CACA classified this MEB as mandatory to assure the airworthiness of these airplanes. Under a bilateral airworthiness agreement, the above airworthiness authority has shared this information with the FAA.

The FAA has examined the findings of the CACA, reviewed all available information, and determined that AD action is necessary for products of this type design, certificated for operation in the United States. The FAA is proposing an AD that would require modification of the electro-hydraulic control system and replacement of the associated hydraulic hoses in accordance with the instructions in MEB No. K/02.141/90, dated April 1990, on Wytownia Sprzetu Komunikacyjnego PZL-Mielec Model M18 (Dromader) airplanes that have Modification D73.701.00.1 incorporated.

It is estimated that 62 airplanes will be affected by the proposed AD, that it will take approximately 8 hours per airplane to accomplish the proposed actions at \$40 an hour, and that the cost of parts to accomplish the modification is estimated to be \$750 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$66,340.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT

Regulatory policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Wytwornia Sprzetu Komunikacyjnego PZL-Mielec; Docket No. 90-CE-07-AD.

Applicability: Model M18 airplanes (serial numbers (S/N) 12013-21 through 12023-30), equipped with an agriculture equipment electro-hydraulic control system (Modification D73.701.00.1), certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent failure of the electro-hydraulic control system that results in loss of flap and brake control, accomplish the following:

(a) For S/N 12013-21 through 12023-30 airplanes, upon the accumulation of 200 hours time-in-service (TIS) or within the next 25 hours TIS after the effective date of this AD, whichever occurs later, replace each flexible hose having part number (P/N) D73.7/21.00.0 or D73.7/24.00.0 with a new hose in accordance with the instructions in PZL-Mielec Mandatory Engineering Bulletin (MEB) No. K/02.141/90, dated April 1990.

(1) If hoses are replaced with either P/N D73.7/21.00.0 or D73.7/24.00.0, replace these hoses at intervals not to exceed 200 hours TIS.

(2) If hoses are replaced with P/N D73.7/26.00.0 or D73.7/25.00.0 hose, no further action is required.

(b) For S/N 12013-21 through 12022-05 airplanes, upon the accumulation of 500 hours TIS or within the next 100 hours TIS after the effective date of this AD, whichever occurs later, modify the electro-hydraulic control system in accordance with the instructions in Paragraph III. 2. of PZL-Mielec MEB No. K/02.141/90, dated April 1990.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(d) An alternate method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Staff, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000, Brussels, Belgium. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Staff.

(e) All persons affected by this AD may obtain copies of the document referred to herein upon request to PZL-Mielec, Ludowego Wojska Polkiego 3, 39-300 Mielec, Poland; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64108.

Issued in Kansas City, Missouri on February 19, 1991.

Henry Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 91-5518 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 90-AEA-18]

Proposed Alteration of VOR Federal Airway; PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of very high frequency omnidirectional radio range (VOR) Federal Airway V-10 located in the State of Pennsylvania. This alteration would extend Federal Airway V-10 from Revloc, PA, to Lancaster, PA. This action would simplify the routings, improve navigation, and make better use of the airspace in this area.

DATES: Comments must be received on or before April 22, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AEA-500, Docket No. 90-AEA-18, Federal Aviation Administration, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC. An informal docket may also be examined during normal

business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 90-AEA-18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No.

11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of VOR Federal Airway V-10. This action would alter the airway by establishing an extension from Revloc, PA, to Lancaster, PA. The change to the airway is necessary due to the unreliability of the Harrisburg, PA, very high frequency omnidirectional radio range and tactical air navigational aid. The proposed change would simplify the routings, improve navigation, and make better use of the airspace in this area. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-10 [Amended]

By removing the words "Clarion, PA, 222" radials; Revloc, PA," and substituting the words "Revloc, PA, 300°T(309°M) radials; Revloc; INT Revloc 107°T(118°M) and Lancaster, PA, 280°T(289°M) radials; Lancaster."

Issued in Washington, DC, on February 28, 1991.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 91-5523 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 356

[Docket No. 81N-0033]

Over-the Counter Dental and Oral Health Care Drug Products for Antiplaque Use; Safety and Efficacy Review; Extension of Submission Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Request for data and information; extension of submission period.

SUMMARY: The Food and Drug Administration (FDA) is extending to June 17, 1991, the period for submission of data and information on ingredients contained in products bearing antiplaque and antiplaque-related claims, such as "for the reduction or prevention of plaque, tartar, calculus, film, sticky deposits, bacterial build-up, and gingivitis." This action responds to two requests to extend the submission period for an additional 90 days.

DATES: Data and information to be submitted by June 17, 1991.

ADDRESSES: Submissions should be sent to the Division of OTC Drug Evaluation (HFD-210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the Federal Register of September 19, 1990 (55 FR 38560), FDA announced a call-for-

data for ingredients contained in products bearing antiplaque and antiplaque-related claims such as "for the reduction or prevention of plaque, tartar, calculus, film, sticky deposits, bacterial build-up, and gingivitis." The agency stated that it will review the submitted data to determine whether these products are generally recognized as safe and effective and not misbranded for their labeled uses. Those interested in supplying data and information were given until March 18, 1991. This call-for-data is part of the agency's ongoing review of over-the-counter (OTC) oral health-care drug products.

The agency has received two requests to extend the submission period for an additional 90 days. A manufacturers' association informed the agency that a number of its members would not be able to adequately respond before the submission period closes because these members must consult with and obtain the concurrence of a number of corporate officials, including a considerable number located outside the United States, prior to submitting comments and/or data. The association stated that this proceeding for OTC dental and oral health-care drug products for antiplaque use is of considerable interest and importance both to the association and to its members. Therefore, the association requested a 90-day extension of the submission period, until June 17, 1991, to allow adequate time to assemble the necessary data and information and to prepare submissions.

A manufacturer stated that it intends to submit data concerning the safety and effectiveness of several ingredients in response to the agency's announcement of a call-for-data on ingredients contained in products making antiplaque and antiplaque-related claims. The manufacturer noted that its major toothpaste research laboratory is located in the United Kingdom, and some of the data needed to establish the safety and effectiveness of these ingredients is located in different parts of the world. The manufacturer also stated that collecting information on the safety and effectiveness of these ingredients throughout the world represents an extensive logistic problem. The manufacturer added that the inherent delay in overseas communication and transportation has prolonged the preparation of these documents because documents prepared by scientists overseas cannot be readily transmitted to the United States and Vice versa. In addition, the manufacturer noted that the generation of submissions

requires extensive summarization and review of available data to bring the documents up-to-date and to put the documents into the format required by the agency. The manufacturer requested, as did the manufacturer's association, that the agency grant a 90-day extension of the submission period to June 17, 1991.

FDA has carefully considered these requests and believes that additional time to allow full opportunity for informed submissions is in the public interest. An extension of the submission period will assure that the agency will have comprehensive data and information on ingredients in products bearing antiplaque claims for the Dental Products Panel to evaluate. Thus, the agency considers a 90-day extension of the data submission period to be appropriate.

Interested persons may, on or before June 17, 1991, submit to the Division of OTC Drug Evaluation (address above) submissions of data and information on ingredients contained in products bearing antiplaque and antiplaque-related claims, as described above. Eight copies of the data and information must be submitted, as discussed in the *Federal Register* of September 19, 1990 (55 FR 38560 at 38562).

Dated: March 4, 1991.

Ronald G. Chesemore,
Associate Commissioner for Regulatory
Affairs.

[FR Doc. 91-5496 Filed 3-7-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 91-01]

Drawbridge Operation Regulations; Cowlitz River, WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the City of Kelso the Coast Guard is considering a change to the regulations governing the Allen Street Bridge across the Cowlitz River, mile 5.5, at Kelso, Washington, to provide that the draw need not be opened for the passage of vessels. This proposal is being made because no requests have been made to open the draw since at least 1983. This action should relieve the bridge owner of the burden of maintaining the machinery and having a person available to open the draw and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before April 22, 1991.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, room 3410. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 553-5864).

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in, the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposal regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Deborah K. Schram, project attorney.

Discussion of the Proposed Regulations

Existing regulations provide that the Allen Street Bridge open upon 24 hours advance notice for normal openings and two hours advance notice for emergency openings, when so requested by the Cowlitz County Department of Emergency Services. No openings have been required since at least 1983. The proposed change would provide that the bridge need not open for the passage of vessels. Since the May 18, 1980 volcanic eruption of Mount Saint Helens and its subsequent mud flow down the Cowlitz River, the channel has been severely silted-in and is passable only by small shallow draft vessels. The Cowlitz River Navigation Project has not been maintained by the Corps of Engineers since 1980. Prior to 1980, the navigation channel was maintained to river mile 4. The channel has not been maintained upstream of mile 4 for more than 25

years. Should emergency dredging be required upstream of the Allen Street Bridge, the necessary equipment would be transported overland to the work site.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12291, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of its present silted-in condition, the waterway is not being used for commercial navigation. When the waterway is restored, either through natural flushing or dredging, low profile tugs could easily pass under the bridge. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).]

2. Section 117.1037 is revised to read as follows:

§ 117.1037 Cowlitz River.

(a) The draw of the Burlington Northern railroad bridge, mile 1.5, shall operate as follows:

(1) The draw shall open on signal if at least 24 hours notice is given.

(2) In the event of an emergency declared by the Cowlitz County Department of Emergency Services, the

bridge shall be capable of opening upon two hours notice. Notification of emergencies and requests for openings during emergencies are initiated through the Cowlitz County Department of Emergency Services.

(3) The operating machinery of the draw shall be maintained in a serviceable condition and the draw shall be opened and closed at intervals frequent enough to make certain that the machinery is in proper order for satisfactory operation.

(4) During periods of fog or similar periods of reduced visibility, the drawtender, after acknowledging the signal to open, shall toll a bell continuously during the approach and passage of the vessel.

(b) The draw of the Allen Street Bridge, mile 5.5, need not open for the passage of vessels.

Dated: February 27, 1991.

J.E. Vorbach,

Rear Admiral, U.S. Coast Guard Commander,
13th Coast Guard District.

[FR Doc. 91-5563 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 9

Alaska Mineral Resource Assessment Program

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes the adoption of regulations at 36 CFR part 9, subpart D to govern mineral resource assessment activities in Alaska units of the National Park System. These assessment activities are authorized under section 1010, the Alaska Mineral Resource Assessment Program (AMRAP), of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), 16 U.S.C. 3150. Specifically, section 1010(b) of ANILCA requires that mineral resource assessments carried out in conservation system units, which include units of the National Park System, be subject to regulations developed by the Secretary of the Interior. The purpose of the regulations is to ensure that the mineral assessments are conducted in an environmentally sound manner that protects the natural systems of the units and are compatible with the purposes for which the units are established. The mineral assessments are exclusively data collection in nature and may be

conducted only by authorized Federal agencies and their contractors. These agencies are limited to Department of the Interior bureaus authorized by the Secretary to conduct mineral assessments pursuant to section 1010 of ANILCA. This rulemaking does not allow for mining in the parks.

DATES: Written comments: The NPS will accept written comments on the proposed rule until 5 p.m. local time on or before April 8, 1991.

The 30-day public comment period will not be extended. Due to the rapidly approaching field season, a final rule must be in place by April 15 to allow for review and permitting of planned and budgeted AMRAP work in Alaska park units. The final rule will become effective 30 days after publication in the Federal Register.

ADDRESSES: Written comments: Mail comments to the National Park Service, Mining and Minerals Branch, WASO 660, Attention: Sharon Kliwinski, P.O. Box 37127, Washington, DC 20013-7127; or to Alaska Regional Office, National Park Service, Attention: Judy Alderson, 2525 Gambell St., room 107, Anchorage, Alaska 99503.

Hand-deliver comments to the National Park Service, Mining and Minerals Branch, Attention: Sharon Kliwinski, room 3223, 1100 L St. NW., Washington, DC; or to Alaska Regional Office, National Park Service, Attention: Judy Alderson, 2525 Gambell St., room 206, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Sharon Kliwinski at the above address, telephone (202) or (FTS) 343-4964; or Judy Alderson at the above address, telephone (907) 257-2623.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion of Proposed Rule
- III. Procedural Matters

I. Background

A. Overview of Alaska Mineral Resource Assessment Program (AMRAP)

The Alaska Mineral Resource Assessment Program (AMRAP) is a Congressionally mandated program authorized by section 1010(a) of the Alaska National Interest Lands Conservation Act (ANILCA; 16 U.S.C. 3150). Section 1010(a) requires that "the Secretary of the Interior shall, to the full extent of his authority, assess the oil, gas, and other mineral potential on all public lands in the State of Alaska in order to expand the mineral resource data base of such lands." Public lands, as defined by section 102(3) of ANILCA (16 U.S.C. 3102), include all Federal

lands in Alaska including those in units of the National Park System. The Secretary must consult with the State of Alaska, the Secretary of Energy and any other Federal agency on this and other mineral assessment programs and is authorized to contract with public or private entities to carry out the program. The Secretary is required to allow for access by air for mineral assessment activities. Section 1010(a) explicitly prohibits the use of core and test drilling as a mineral assessment technique that could be used on lands in units of the National Park System. This prohibition includes exploratory drilling of oil and gas test wells. AMRAP is an ongoing program and mineral assessment activities have been conducted on public lands in Alaska pursuant to AMRAP for 10 years.

Pursuant to section 1010(b) of ANILCA, activities carried out in conservation system units under subsection (a) shall be subject to regulations promulgated by the Secretary of the Interior. Such regulations must ensure that such activities are carried out in an environmentally sound manner that (1) do not result in lasting environmental impacts that appreciably alter the natural character of the units or biological or ecological systems in the units; and (2) are compatible with the purposes for which the units are established.

Section 1011 of ANILCA requires the President to submit an annual report to Congress on all pertinent public information relating to minerals, including oil and gas, in Alaska gathered by the U.S. Geological Survey (USGS), and Bureau of Mines (BOM), and other Federal agencies.

While ANILCA section 1010(a) and section 1011 provide a Congressional mandate to the Secretary to conduct mineral resource assessment work and report the results to Congress, section 1010(b) is designed to ensure that the work is carried out in an environmentally sensitive manner. The intent of these regulations is to provide a process and guidelines for permitting access to National Park System lands for the conduct of mineral assessment work per section 1010 while at the same time ensuring that the work does not result in lasting impacts and is compatible with park purposes and values.

B. Objectives of AMRAP

AMRAP is a Federal program mandated by Congress for the collection of geologic, geochemical, geophysical, and mineral deposit data in order to

assess the oil, gas, and other mineral potential on all public lands in Alaska. The program includes the prediction and/or determination of the location, type, amount, and extent of the mineral resources on these lands. The objective of the program is to provide Congress with baseline data about the occurrence of minerals in conservation system units to aid in future legislative land status decisions.

The U.S. Geological Survey (USGS) is the primary agency responsible for AMRAP research. The goal of the USGS AMRAP is a systematic investigation of Alaska's mineral resources through four progressively more detailed levels of study. Level I studies are very broad State-wide studies; Level II studies address large parts of the State with resultant maps generally at a scale of 1:1,000,000; Level III studies generally produce resource assessment maps at a scale of 1:250,000 (1 inch=6 miles) and 1:125,000 (1 inch=3 miles); and Level IV studies detail specific mining districts, mineral deposits or topics related to the genesis of mineral deposits. The major effort is currently at the Level III stage with studies in progress in 26 quadrangles. Out of a total of 153 quadrangles to be studied, 25 have been completed to date.

Mineral resource assessment work conducted by the Bureau of Mines (BOM) typically involves the collection of mineral data to determine the location, type, amount and physical extent of mineral resources. Most of the work involves mapping and sampling to document the configuration and location of mines, prospects, claims and mineralized areas.

The Minerals Management Service (MMS) has no mandate to assess public lands under ANILCA, however, the agency has in the past and will probably continue to request access to park lands to conduct investigations involving sampling and taking measurements of the physical properties of rock. The results of this research are used in assessing the mineral potential and geologic characteristics of rock units underlying the Outer Continental Shelf.

Other Interior agencies, such as the Bureau of Land Management, may from time to time request access to NPS lands to conduct mineral resource assessment work necessary to meet the goals of their program missions.

AMRAP encompasses the study of all public lands in Alaska, including those managed by the U.S. Fish and Wildlife Service, the Bureau of Land Management, the U.S. Forest Service, and the National Park Service. AMRAP studies are coordinated so that contiguous parcels of land under

management by different agencies may be studied. On private lands, permission is obtained for entry and information is shared through the publication process. Mineral resource and work plan information is communicated to the State of Alaska, and commonly promotes cooperative projects with the State, especially where State and Federal lands are contiguous.

C. Technical Aspects of Mineral Resource Assessments Under AMRAP

Most mineral resource assessments conducted under AMRAP include first time studies of areas that contain up to several million acres. Much of the work now, and for the foreseeable future, is reconnaissance in nature involving the systematic study of the mining districts and 1:250,000-scale quadrangle maps. ANILCA recognizes the logistic difficulties of working in Alaska and directs the Secretary to allow access by air for the accomplishment of AMRAP activities on public lands. AMRAP field work consists principally of: (1) Geologic mapping and hand sampling on foot traverses in combination with helicopter landings to fill in the gaps in data between traverses; (2) geochemical sampling requiring access by foot, boat, light trucks where roads exist, and supplemental helicopter landings to complete the systematic collection of stream sediments, water, soils, rocks, and occasionally small samples of vegetation; and (3) systematic geophysical surveys.

Geophysical surveys typically include instrumental measurements made on the ground simultaneously with geologic and geochemical sampling, and occasionally require the excavation with hand tools of holes a few inches deep in order to implant temporary electrodes. Geophysical sampling also may include collection of paleomagnetic specimens by use of a hand-held drill to remove small cylindrical samples.

Geologic sample collection usually is restricted to fist-sized samples although larger samples of a couple of pounds occasionally are taken for certain analytical techniques such as radiometric dating, assaying, and mineral characterization and beneficiation studies. The agencies conducting AMRAP activities do not use drilling, trenching, or other techniques that result in lasting environmental impacts.

Core and test drilling, including exploratory oil and gas test wells, are explicitly prohibited in park units pursuant to § 1010(a) of ANILCA.

Overflights by helicopter and small fixed-wing aircraft occasionally are required for collection of instrumental

remotesensing geophysical data. Minimum flight elevations above the ground range from 400 to 1,000 feet, and flight-line spacings are from one-fourth to 20 miles or may consist of a single line only.

In a typical quadrangle, the density of stations for gathering data, including sample sites, is about 1 station per 1-10 square miles. There is often detailed work to study critical geologic localities or critical and strategic mineral deposits, but most of the work is general rather than detailed. Completion of data collection for a quadrangle or a specific site can require 3 to 4 field seasons of 30-45 days duration each. Field work generally requires teams of 5 to 10 scientists and support staff.

Field work is typically based from one or two fixed camps, and utilizes helicopters for movement within the area being studied. Field camps are relatively small, temporary, and unobtrusive. Field teams often work out of existing lodges or commercial facilities when practical and efficient. AMRAP field work depends heavily on the use of helicopters. Most Alaska study areas are so large and remote that it is oftentimes inefficient and sometimes unsafe to access the areas otherwise.

D. AMRAP Studies in Units of the National Park System

Congress established the National Park System to preserve certain natural, cultural, scenic, and recreational resources of exceptional quality and national significance for the use and enjoyment of present and future generations. Legislation and proclamations establishing individual parks may provide more specific direction about park purposes, significant resources, and appropriate uses. Within these parameters, proposals for park uses are evaluated in terms of their consistency with applicable legislation, executive orders, and regulations, as well as their actual and potential effects on park values, purposes, and resources. Special park uses may be permitted pursuant to 36 CFR 1.6 using the criteria and procedures outlined in the Special Park Uses Guideline (NPS-53).

Over the past several years, the NPS received numerous requests from the USGS, MMS, and BOM to allow entry onto park lands to conduct mineral resource assessment work. These requests include permission to conduct geologic mapping and reconnaissance, collection of mineral and rock samples, geochemical studies of streams, geophysical studies, and helicopter

access and field camp support operation. In the absence of the regulations required by section 1010(b) of ANILCA to implement AMRAP in Alaska parks, the NPS permitted the mineral assessment work under the provisions of 36 CFR 1.6 and 36 CFR 2.5. The general provisions of § 1.6 were used to permit AMRAP activities when requests for those activities could not meet the requirements of § 2.5. The requirements of § 2.5 and the NPS Management Policies are very specific and limited in scope to the collection of research specimens. Under § 2.5, the NPS may allow reputable scientific or educational institutions, State and Federal agencies to collect rocks and minerals under a specimen collection permit for the purpose of research, baseline inventories, monitoring, impact analysis, group study or museum display. Such research must meet the management goals of the requesting agency, but it must also further park objectives as articulated in existing legislation and NPS planning documents. Section 2.5 was never intended to accommodate the long term program needs of the AMRAP agencies.

Additionally, section 1010(b) of ANILCA mandates that the Secretary promulgate regulations to ensure that mineral assessment activities conducted in conservation system units in Alaska are carried out in an environmentally sound manner. Such regulations therefore are the appropriate mechanism for approving AMRAP activities in parks.

E. AMRAP in Wilderness Areas

The NPS wilderness management policies are based on statutory provisions of the 1916 NPS Organic Act (16 U.S.C. 1 *et seq.*), the 1964 Wilderness Act (16 U.S.C. 1131 *et seq.*) and legislation establishing individual units of the national park system.

AMRAP activities conducted in NPS wilderness areas will be carried out in accordance with the applicable NPS wilderness management plan, and the applicable provisions of the Wilderness Act so as to preserve wilderness resources and character. The Wilderness Act generally prohibits motorized equipment or mechanized transport in designated wilderness areas. Assessment activities conducted by foot or in some instances by hand-propelled watercraft may be allowed. The use of aircraft will be in accordance with the applicable wilderness management plan.

Since passage of the Wilderness Act of 1964 and the Federal Land Policy and Management Act of 1976, the USGS and the BOM have conducted mineral

resource assessments and evaluations on U.S. Forest Service and Bureau of Land Management wilderness study areas. These assessments are essentially identical to those mandated on public lands in Alaska under section 1010 of ANILCA and demonstrate that such work is being carried out in an environmentally sound manner.

F. Contracting of AMRAP Activities

Under §1010, the Secretary is authorized to enter into contracts with public and private entities to carry out all or any portion of the mineral assessment program. Agencies conducting AMRAP studies periodically contract with other State or Federal agencies or private entities to perform work. The USGS rarely contracts geologic and geochemical work, but does contract some geophysical surveys and certain support functions including helicopter services and installation of camps and fuel caches. Nearly all of MMS research projects have been cooperative efforts, mostly with private industry and the State of Alaska. If MMS intends to use third party assistance in carrying out AMRAP activities in the parks in the future that assistance must be governed by a legally binding contract. All information or data of an AMRAP study recovered under contract is the property and under the control of the AMRAP agency.

II. Discussion of Proposed Rules

Authority

The Alaska National Interest Lands Conservation Act of 1980 (ANILCA), 16 U.S.C. 3150, is the primary statutory authority for the promulgation of these regulations.

The Organic Act (16 U.S.C. 1 *et seq.*, as amended) that established the NPS provides additional authority. It mandates the Service to conserve the scenery, natural and historic objects, and wildlife of park units, and to provide for public enjoyment of the units in such manner and by such means as will leave them unimpaired for the enjoyment of future generations. Section 3 of the Act authorizes the Secretary of the Interior to promulgate rules and regulations necessary for the management of the National Park System. The Organic Act further provides that authorization of activities in units of the National Park System shall be construed in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of park values and purposes unless specifically and directly provided for by Congress. The enabling legislation for the various units

of the National Park System in Alaska sets out the purposes for such units.

The Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*) concurs and generally reinforces the resources protection mandate of the NPS Organic Act under which the NPS already operates.

Section 9.80 Purpose

The purpose of these regulations is to govern mineral assessment activities conducted pursuant to section 1010 of ANILCA in Alaska units of the National Park System. The regulations do not address the conduct of AMRAP activities on lands managed by the U.S. Fish and Wildlife Service, the Bureau of Land Management, or the U.S. Forest Service. The regulations ensure, consistent with section 1010(b) of ANILCA, that AMRAP activities are carried out in an environmentally sound manner that does not result in lasting environmental impacts that appreciably alter the natural character of the units or biological or ecological systems in the units. Also consistent with Section 1010(b), the regulations ensure that the activities are conducted in a manner that is compatible with the purposes for which the units are established. Consistent with the NPS Organic Act, the regulations ensure that AMRAP activities are conducted in a manner that leaves park resources and values unimpaired for the enjoyment of present and future generations.

Section 9.81 Scope and Applicability

All activities conducted under the Alaska Mineral Resource Assessment Program (AMRAP) authorized by Section 1010 of ANILCA in Alaska units of the National Park System will be subject to the regulations of this subpart.

This section requires that all AMRAP activities conducted in parks meet the requirements of ANILCA, these regulations, the terms and conditions of any permit approved under this subpart, and any other applicable statutes and regulations and any amendments.

Section 9.82 Definitions

This section defines the terms used in this subpart. The term *AMRAP Activities* defines the types of mineral resource assessment techniques, methods, and related activities that may be conducted in park units under the AMRAP program. Such activities may be conducted only by authorized AMRAP agencies and their contractors and are subject to the conditions and stipulations of a permit issued by the NPS. AMRAP activities include access into, across, or through a unit of the National Park System when such access

is incidental to mineral resource assessments conducted under AMRAP.

Only mineral resource assessment method or techniques that do not result in appreciable lasting environmental impacts on park resources and values may be permitted by the NPS as AMRAP activities. These techniques may include hand sampling of geologic materials, and instrumental remote-sensing measurement. Certain geophysical techniques such as magnetic, chemical, and gravitational also may be allowed. Paleomagnetic specimens may be collected by using a hand held drill to remove small cylindrical samples.

Mineral assessment techniques and geophysical methods will be permitted only when (1) no explosives are used, (2) they are consistent with the standards set out in § 9.86 of this subpart, and (3) they are consistent with the applicable provisions of the Wilderness Act and NPS policies for wilderness management. The NPS may regulate the use of motorized equipment and aircraft in designated wilderness area. Pursuant to section 1010(a) of ANILCA, core and test drilling are explicitly prohibited in park units. This prohibition includes exploratory drilling of oil and gas wells. Under these regulations, the use of explosives is specifically prohibited as an AMRAP activity because of the nature of impacts associated with that technique.

AMRAP Agencies are defined as those agencies in the Department of the Interior that are authorized by the Secretary to perform mineral assessment work under section 1010 of ANILCA on Federal lands in Alaska. At this time, this work is primarily conducted by the USGS, BOM and MMS. The BLM may at some time in the future request access to park lands to conduct mineral assessments. Mineral assessment work is subject to the conditions and stipulations of permits issued by the NPS. An AMRAP agency may enter into a legally-binding contract with a third party for conducting work under AMRAP. Any State or Federal agency, university, or private entity contracted by an AMRAP agency to conduct AMRAP work will operate under an NPS permit issued to the AMRAP agency, and the AMRAP agency will be responsible for all contractor activities on park lands.

Section 9.83 Coordination of AMRAP Activities in National Park System Units

This section establishes the minimum criteria for coordinating AMRAP activities among AMRAP agencies and the NPS.

Section 9.83(a). Each AMRAP agency will designate a lead official who will be responsible for working and coordinating with the NPS thereby ensuring compliance with these regulations.

Section 9.83(b). AMRAP agencies will coordinate, and in consultation with the NPS Regional Director, schedule an interagency meeting to be held pursuant to (c) of this section. The interagency meeting time and location must be scheduled no later than January 1 of each year.

Section 9.83(c). This subsection establishes a coordination mechanism for AMRAP activities in Alaska parks. An annual interagency meeting consisting of representatives from the AMRAP agencies and the NPS will be held no later than January 31. The purpose of the meeting is to minimize impacts to park resources and values through a coordinated review of annual and long-term work plans of all AMRAP agencies. It should result in the elimination of duplication of assessment activities and coordination of access and logistics in Alaska parks.

Section 9.84 Application Requirements

The AMRAP agencies shall provide the NPS with such information as is necessary for the NPS to ensure that AMRAP activities are carried out in an environmentally sound manner. To the extent possible, adhering to established timeframes is essential to enable timely and efficient completion of logistical, contracting, and staffing arrangements. Normally helicopter and analytical contracts must be negotiated, advertised, or obligated well in advance of the field season to ensure availability.

Section 9.84(a). Prior to each field season but no later than March 1 of each year, each AMRAP agency shall submit to the NPS a complete application for proposed AMRAP activities to be conducted in park units. The applications will be based on each agency's work plan as developed pursuant to the annual coordination meeting held under § 9.83(c). Applications may cover proposed activities to be conducted only in the current field season or may include activities for subsequent field seasons if adequate information is available about future field work. Applications that do not meet the requirements of § 9.84(b) will be returned to the AMRAP agency for revision or additional information.

Section 9.84(b). This subsection establishes the minimum requirements for information to be submitted to the NPS for issuance of a permit for proposed AMRAP activities. The information required includes the names

of the AMRAP agency organizational office(s) that will actually conduct AMRAP activities and the names AMRAP of any contractual representative that may be involved in the activities.

The application must include the purpose for conducting the AMRAP activities, maps showing the areas where the activities are proposed to be conducted, and the estimated dates on which the activities are proposed to begin and end. Project specific research design for each activity proposed will also be required such as a description of the mineral assessment techniques or methods and equipment to be used.

A description of the method to be used to access each area of proposed activities must also be provided. This subsection requires a description of support requirements necessary for the each project, including a description of base camps, gasoline storage, or any other equipment.

The application must include a discussion of the methods used to ensure that the activities are carried out in an environmentally sound manner using the best available and least impacting technology. The AMRAP agency must also describe the environmental and physical effects of AMRAP activities to allow for adequate environmental analysis. The Regional Director may require additional information on the proposed activities if such information is necessary to fully assess the nature, extent, location, or effects of the activities.

Section 9.85 Environmental Compliance

Section 9.85 assigns the responsibility for compliance with the National Environmental Policy Act for activities authorized under these regulations to the NPS. All NEPA compliance will be conducted in accordance with applicable regulations, standards, and guidance, including NPS 12: NEPA Compliance Guideline. AMRAP agencies will be responsible for providing to NPS sufficient information on proposed projects to allow NPS to conduct impact analyses.

Section 9.86 Application Review Process and Approval Standards

This section defines the process by which applications for proposed AMRAP activities will be reviewed and the standards to be applied by NPS in approving those applications.

Section 9.86(a). The NPS will review applications submitted pursuant to § 9.84 and, no later than April 15 of each year, will notify the AMRAP agency of

its decision to approve or disapprove the proposed activities. Because applications must be submitted to NPS by the AMRAP agency no later than January 31, this subsection establishes a 2½ month review period for the NPS. The regulations further provide for the Regional Director to extend the review time beyond April 15 if necessary to comply with Federal and State requirements, especially consultation procedures. As discussed earlier, it is essential that NPS notify AMRAP agencies of permit approval or disapproval before the beginning of the field season to allow for staff allocation and aircraft procurement.

Section 9.86(b). The NPS Regional Director is responsible for authorizing AMRAP activities in park units. This will assure coordination and consistency among requested activities in various parks. Appropriate park superintendents will review and make recommendations on projects proposed in their parks. The Regional Director may delegate the approval of AMRAP projects to a park superintendent at his discretion.

Section 9.86(c). This subsection sets out the specific standards by which the Regional Director may approve AMRAP activities. Consistent with section 1010(b) of ANILCA, the proposed activities may not be approved if those activities will not be carried out in an environmentally sound manner, or will result in lasting impacts to the environment. Additionally, AMRAP activities may not be approved if they are incompatible with the purposes and values for which the unit was established, and/or if the activities would adversely affect the resources of the area. There may be some proposed activities where the standards for approval do not allow the Regional Director to approve the activities. Denial of a permit for AMRAP activities means the project design or other features of the proposal has not met the standards found in this subsection. Such denial does not preclude the AMRAP agency from submitting another proposal for approval, except where an area is specifically closed to the kind of proposed use.

Section 9.87 Permitting Requirements and Standards

This section sets forth specific permit standards and requirements to be applied to all approved permits.

Section 9.87(a). No AMRAP activities may be conducted in park units without a permit approved by the NPS. NPS will approve the permit in accordance with this Subpart, 36 CFR 1.6 (NPS regulatory authority to issue Special Use Permits),

and other applicable regulations, guidelines, and policies, including NPS-53: Special Park Uses Guideline.

Section 9.87(b). AMRAP activities will not be permitted in areas that are restricted or closed to use by the NPS. Such areas may include wildlife breeding areas, areas of cultural or historic significance, or other types of highly sensitive areas. Helicopter or other types of aircraft access will not be allowed except in accordance with existing NPS policies and restrictions. Other types of access will be evaluated based on the areas to be accessed, seasonal conditions, and any applicable restrictions or closures.

Section 9.87(c). All areas of AMRAP activities must be abandoned in a manner that leaves that area unimpaired. Any ground or stream bed holes resulting from hand tool sampling will be filled in to eliminate all signs of disturbance. Support camp sites or other land disturbing activities associated with the mineral assessments will be reclaimed and abandoned so as to restore the area to its natural condition. If it becomes necessary for the NPS to restore an area affected by AMRAP activities, the costs for such restoration will be recoverable from the AMRAP agency.

Section 9.87(d). All data gathered as a result of AMRAP activities in park units be made available to the public and, if published, copies provided to the NPS.

Section 9.87(e). NPS may monitor ongoing AMRAP activities ensuring that those activities are conducted pursuant to these regulations and the terms and conditions of the approved permit.

Section 9.88 Permit Modification, Suspension, and Cancellation

This section sets forth the procedures and requirements for modifying, suspending, or canceling an approved permit.

Section 9.88(a). An AMRAP agency may submit a written proposal to the Regional Director to modify or amend an approved permit. Modifications may be necessary to make adjustments due to changes in weather, staffing, transportation or budget. The Regional Director must review and either approve or disapprove the modification within a reasonable timeframe so scheduling of that field season's activities can proceed.

Section 9.88(b). Under this subsection, the Regional Director may suspend, modify or cancel an AMRAP agency's permit to conduct AMRAP activities. A permit will be suspended when the Regional Director finds that there is an imminent threat to public health and safety or natural and cultural resources

of the unit; or the agency or its contractors is in violation of applicable laws or the approved permit.

Section 9.88(c). This section sets the procedural requirements for dealing with suspensions, modifications and cancellations of approved permits.

Section 9.88(d). If a permit is suspended or canceled by the Regional Director, the AMRAP agency or its contractors are not relieved of the obligation to restore any location in accordance with these regulations and all other requirements of the approved permit.

Section 9.89 Appeals

Any action taken by the Regional Director pursuant to these regulations may be appealed by an AMRAP agency to the Director of the National Park Service within 30 days from the date of the initial decision made by the Regional Director. If resolution of the issue cannot be reached, the action or issue will be elevated to the Department for resolution.

III. Procedural Matters

Federal Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The subject rules apply only to Federal agencies and their contractors.

National Environmental Policy Act

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4331 *et seq.*) the NPS has prepared an environmental assessment of these proposed regulations. The analysis in the EA shows that implementation of the regulations will not be a major Federal action that would have a significant effect on the quality of the human environment requiring the preparation of an environmental impact statement. The EA is on file in the following NPS offices: Mining and Minerals Branch, Land Resources Division, room 3223, 1100 L Street NW., Washington, DC (P.O. Box 37127, Washington, DC 20013-7127); and the NPS Alaska Regional Office, room 206, 2525 Gambell Street, Anchorage, Alaska 99503. The EA will be available for public inspection and comment for a period running concurrently with the comment period on these regulations. All statutory requirements and Department NEPA procedures will be followed prior to release of the final rule to assure that adequate public involvement occurs and

environmental concerns are identified and addressed.

Regulatory Flexibility Act and Executive Orders 12291 and 12630

The NPS has determined and the Department of the Interior has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This rule has been reviewed in conformity with Executive Order 12291 and has been classified as "not major." This action does not constitute a major rule since its implementation will not result in: (i) an annual effect on the economy of \$100 million or more; (ii) major increases in costs or prices for consumers, individual industries, Federal, State or local governments, or a geographic region; or (iii) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

These regulations do not require the preparation of a Takings Implication Assessment pursuant to Executive Order 12630 because the rules will not affect the use or value of private property.

Author

The principal author of this regulation is Sharon P. Kliwinski, Mining and Minerals Branch, National Park Service, P.O. Box 37127, Washington, DC 20013-7127; telephone (202) or FTS 343-4964.

List of Subjects in 36 CFR Part 9

Environmental protection, Mines, National parks, Oil and gas exploration, Public lands-mineral resources, Public lands-rights-of-way.

For the reasons discussed in the preamble, 36 CFR part 9, subpart D is proposed to be added as follows:

PART 9—MINERALS MANAGEMENT

Subpart D—Alaska Mineral Resource Assessment Program

Sec.	
9.80	Purpose.
9.81	Scope and applicability.
9.82	Definitions.
9.83	Coordination of AMRAP activities in National Park System units.
9.84	Application requirements.
9.85	Environmental compliance.
9.86	Application review process and approval standards.
9.87	Permitting requirements and standards.
9.88	Permit modification, suspension, and cancellation.
9.89	Appeals.

Authority: Alaska National Interest Lands Conservation Act, 16 U.S.C. 410hh; 16 U.S.C. 3101, *et seq.*; National Park Service Organic Act of August 25, 1916, as amended, 16 U.S.C. 1, *et seq.*; the acts establishing the units of the National Park System in Alaska (16 U.S.C. 347; 16 U.S.C. 410bb; 16 U.S.C. 431); and the Wilderness Act of 1964, 16 U.S.C. 1131 *et seq.*

§ 9.80 Purpose.

These regulations govern the conduct of the mineral resource assessment activities authorized under section 1010 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3101, *et seq.*, in units of the National Park System in Alaska. The regulations are designed to ensure that authorized Federal agencies and their contractors carry out mineral resource assessment activities in an environmentally sound manner that does not result in lasting environmental impacts that appreciably alter the natural character of the units, or biological or ecological systems in the units; is compatible with the purposes for which the units are established; and ensures that all units are left unimpaired and preserved for the enjoyment of present and future generations.

§ 9.81 Scope and applicability.

These regulations apply to all activities conducted by authorized agencies and their contractors on public lands in units of the National Park System in Alaska under the Alaska Mineral Resource Assessment Program (AMRAP) as authorized by section 1010 of ANILCA. AMRAP activities conducted under this subpart shall be performed in accordance with ANILCA, the regulations in this subpart, the terms and conditions of an approved permit, and other applicable statutes and regulations, and amendments thereto.

§ 9.82 Definitions.

The terms used in this subpart shall have the following meaning:

(a) **AMRAP** means the Alaska Mineral Resource Assessment Program authorized by section 1010 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), 16 U.S.C. 3150.

(b) **AMRAP Activities** means any project, method, technique or other activity incidental to mineral resource assessments conducted by authorized AMRAP agencies or their contractors in units of the National Park System in Alaska pursuant to section 1010 of ANILCA under an approved permit. AMRAP activities include access into, across, or through a unit of the National Park System for the conduct of those activities. Only mineral resource assessment methods or techniques that do not result in lasting impacts on park resources and values may be permitted

as AMRAP activities. Mineral resource assessment techniques may include aerial photography; remote sensing; hand-sampling of geologic materials; hand-sampling or hand-augering methods for geochemical analyses; and geophysical techniques such as magnetic, electrical, electromagnetic, chemical, radioactive, and gravitational methods. Mineral resource assessment activities may be permitted as long as (1) no explosives are used, (2) they are consistent with section 9.86 of this subpart, and (3) they are consistent with the provisions of the Wilderness Act of 1964 (16 U.S.C. 1131 *et seq.*) and National Park Service policies concerning wilderness management. Core and test drilling, including exploratory drilling of oil and gas test wells, are explicitly prohibited as AMRAP activities in units of the National Park System.

(c) **AMRAP agencies** means those agencies of the U.S. Department of the Interior that are authorized by the Secretary to perform mineral assessment activities pursuant to section 1010 of ANILCA.

(d) **Regional Director** means the Regional Director of the Alaska Regional Office of the National Park Service (NPS), or the Regional Director's designee.

§ 9.83 Coordination of AMRAP activities in National Park System units.

(a) To facilitate compliance with this subpart, each AMRAP agency will designate a coordinator who will be the central point of communications with the NPS on its AMRAP activities in Alaska. The AMRAP agency is responsible for notifying the Regional Director of such designation.

(b) By January 1 of each year, the designated coordinators for the AMRAP agencies will, in consultation with the Regional Director, schedule an interagency meeting to be held by January 31 of each year. Representatives of the AMRAP agencies and the NPS will meet to develop a mutually agreeable agenda of AMRAP projects and activities in Alaska units of the National Park System. Where practicable, AMRAP agencies will consolidate their field activities, including access and field camps, to minimize disturbance to park resources and values.

§ 9.84 Application requirements.

(a) By March 1 of each year, the designated coordinator of each AMRAP agency will forward to the Regional Director an application pursuant to § 9.84(b) for proposed AMRAP projects

and activities discussed and reviewed at the annual coordination meeting held under § 9.83(b). Applications requiring additional information will be promptly returned to, or discussed with, the coordinator of the involved AMRAP agency to resolve any deficiencies.

(b) Applications will be submitted in a form and manner prescribed by the Regional Director and will contain at a minimum:

(1) The name of the AMRAP agency and responsible office and, where applicable, its designated contractual representative that will conduct the proposed activities;

(2) The name, office address and telephone numbers of the AMRAP agency persons or contractor persons who will supervise the proposed activities, and a list of all individual's names, addresses and telephone numbers who will be present at field activities.

(3) A list of any previous AMRAP activities or prior geologic and mineral assessments that have occurred in the proposed study areas;

(4) A discussion of overall project objectives, schedules and products, and how the proposed activities for the current application relate to those objectives;

(5) A description of the activities proposed for approval, including a detailed description of the collection techniques, sampling methods and equipment to be used in each area;

(6) Topographic maps identifying the specific areas in units of the National Park System where the agency proposes to conduct each AMRAP activity;

(7) The approximate dates on which the AMRAP activities for each area are proposed to be commenced and completed;

(8) A description of access means and routes for each area in which work is proposed including an estimate of the number of flights or number of vehicle trips;

(9) A description of the field support requirements proposed for locations on lands within units of the National Park System, including camp sites, fuel storage areas, and any other requirements;

(10) A discussion which documents that proposed activities will be carried out in an environmentally sound manner utilizing the least impacting technology suitable for the purposes of the project; and

(11) A description of how any disturbed areas, such as camp sites, will be reclaimed.

§ 9.85 Environmental compliance.

Each AMRAP agency is responsible for obtaining all required Federal, State, and local permits and must provide sufficient information to the NPS to ensure appropriate compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and other applicable statutes.

§ 9.86 Application review process and approval standards.

(a) The Regional Director will review applications submitted pursuant to § 9.84 and will take action on such applications by April 15 of each year. If additional review time is necessary to ensure compliance with this Subpart or with other applicable laws, Executive Orders and regulations, the Regional Director will promptly notify the AMRAP agency coordinator of the anticipated date of a final decision.

(b) The Regional Director is responsible for approving AMRAP activities in units of the National Park System in Alaska.

(c) To be approved, proposed AMRAP activities must be designed to be carried out in an environmentally sound manner, as determined in appropriate environmental documentation, that:

(1) Does not result in lasting environmental impacts that appreciably alter the natural character of the units or the integrity of the biological or ecological systems in the units; and

(2) Is compatible with the purposes and values for which the units are established; and

(3) Does not adversely affect the natural and cultural resources, visitor use, or administration of the area.

§ 9.87 Permitting requirements and standards.

(a) AMRAP activities may be conducted in units of the National Park System pursuant to a permit issued by the Regional Director in accordance with this subpart, 36 CFR 1.6, and other applicable regulations, guidelines and policies.

(b) The NPS may restrict the conduct of AMRAP activities in certain areas and during sensitive periods, such as nesting, calving and spawning seasons, to minimize impacts of fish and wildlife or to comply with existing policies or directives.

(c) All project areas affected by AMRAP activities shall be left in an unimpaired state by the AMRAP agency and its contractors. All costs borne by the NPS in cleaning or restoring an area affected by AMRAP activities will be recoverable from the AMRAP agency.

(d) Copies of all published information or written reports resulting from

AMRAP activities conducted in units of the National Park System shall be provided to the Regional Director.

(e) The NPS reserves the right, without prior notice to the AMRAP agency or its contractors, to observe or inspect AMRAP activities to determine whether such activities are being conducted pursuant to this subpart and the terms and conditions of the approved permit.

§ 9.88 Permit modification, suspension, and cancellation.

(a) A proposal to modify, supplement, or otherwise amend an approved permit shall be made by an AMRAP agency by written request to the Regional Director. The Regional Director shall review and promptly act on the proposed modification pursuant to the standards set forth in § 9.86. An AMRAP agency requesting modification of an approved permit may not undertake any of the activities proposed under the modification prior to review and action by the Regional Director.

(b) The Regional Director may suspend, modify, or cancel an AMRAP agency's permit by notifying the agency in writing, or orally in an emergency situation, when the Regional Director determines that:

(1) Changes to the permit are necessary to address conditions not previously anticipated; or

(2) There is imminent threat of serious, irreparable, or immediate harm or danger to public health and safety, or the natural and cultural resources and values of the unit; or

(3) The AMRAP agency or its contractors fails to comply with the provisions of ANILCA or of any other applicable law or regulation, the provisions and conditions of the approved permit and any modification thereto, or any written or field orders issued by the Regional Director.

(c) Suspensions, modifications or cancellations shall be effective immediately upon receipt of oral or written notice from the Regional Director. Notices issued orally shall be followed by written notice sent by certified mail within three (3) working days confirming and explaining the action. Suspensions shall remain in effect until the basis for the suspension has been corrected to the satisfaction of the Regional Director. Cancellation notices shall state the reason for cancellation and shall be sent by the Regional Director to the AMRAP agency at least fourteen (14) days in advance of the date the cancellation will become effective.

(d) Suspension or cancellation of a permit to conduct AMRAP activities shall not relieve the AMRA agency or its contractors or of the obligation to restore any location in accordance with the requirements of this subpart and to comply with all other obligations specified in this subpart and in the permit.

§ 9.89 Appeals.

Written appeals made within 30 days of a final decision by the Regional Director pursuant to this subpart shall be reviewed by the Director of the National Park Service. Resolution of any outstanding issues shall follow current Department of the Interior procedures for resolving interagency disputes.

Dated: February 21, 1991.

S. Scott Sewell,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 91-5480 Filed 3-7-91; 8:45 am]

BILLING CODE 4310-70-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-47, RM-7620]

Radio Broadcasting Services; Fairfield, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Fairfield Communications proposing the allotment of Channel 255A at Fairfield, Illinois, as the community's first local FM service. Channel 255A can be allotted to Fairfield in compliance with the Commission's minimum distance separation requirements with a site restriction of 4 kilometers (2.5 miles) northwest of the community, in order to avoid a short-spacing to Station WKDQ(FM), Channel 258C, Henderson, Kentucky. The coordinates are North Latitude 38-24-21 and West Longitude 88-23-54.

DATES: Comments must be filed on or before April 22, 1991, and reply comments on or before May 7, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant,

as follows: Philip M. Baker, 4701 Willard Avenue, Washington, DC 20815 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-47, adopted February 19, 1991, and released March 1, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-5435 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[Gen. Docket No. 89-89, FCC 90-431]

Home Satellite Service; Syndicated Exclusivity Requirements

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry and notice of proposed rulemaking termination of proceeding.

SUMMARY: This *Report and Order* terminates the Commission's inquiry into the feasibility of imposing syndicated exclusivity rules similar to the Commission's cable rules with respect to the satellite delivery for

private home viewing of syndicated programming on retransmitted broadcast station signals. In Pub. L. No. 100-667, Title II, Congress enacted an interim compulsory license for satellite carriage of syndicated programming and directed the Commission to adopt syndicated exclusivity rules applicable to the satellite retransmissions if feasible. After reviewing the record in this proceeding, the Commission finds implementation of these rules not to be feasible. Therefore, it terminates the proceeding without adopting such rules.

FOR FURTHER INFORMATION CONTACT: David Siddall, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order (Report)* in Gen. Docket No. 89-89, adopted December 31, 1990, and released February 8, 1991. The complete text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC., and also may be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, NW., Washington, DC.

Synopsis of Report and Order

1. This proceeding was initiated in 1989 (See Notice of Inquiry and Notice of Proposed Rulemaking, Gen. Docket No. 89-89, 54 FR 19413, May 5, 1989), when the Commission requested comment on whether it is technically and economically feasible to apply some form of syndicated exclusivity requirements to satellite carriers or to other program distributors that sell broadcast programming retransmitted by satellite carriers in the home satellite dish market. The Commission also inquired about the feasibility of alternatives, such as purchase of national or local syndicated program rights by satellite carriers or satellite program distributors.

2. In the Satellite Home Viewer Act of 1988 (SHVA), Congress enacted an interim compulsory copyright license for satellite carriers serving the home satellite dish (HSD) market that retransmit television broadcast signals. Under the terms of this compulsory license such carriers must pay statutorily prescribed fees through 1992 or until they reach separate agreement on appropriate fees with program copyright owners. The SHVA instructs the Copyright Royalty Tribunal to

initiate a process in 1991 designed to result in agreement on fees among the parties by voluntary negotiation or, if necessary, compulsory arbitration, for 1993 and 1994. The compulsory license completely expires at the end of 1994. In this manner Congress sought to encourage the establishment of, and transition to, a marketplace copyright licensing mechanism for satellite delivery of broadcast programming to the HSD market.

3. In the Report and Order, the Commission finds it technically infeasible to apply syndicated exclusivity regulation to the distribution of satellite signals to HSD owners before the end of 1994, when the interim compulsory copyright license will expire, and therefore declines to promulgate such rules. The time necessary to design, produce and sell to HSD owners new decoding equipment, as well as necessary new firmware and software, precludes substantial implementation of full syndicated exclusivity regulation before the end of 1994, when the interim compulsory copyright license for satellite carriers will expire. Having found full implementation technically infeasible during this time frame, the Commission considered but rejected mandating a more limited scheme requiring protection of only 32 or 56 geographic areas. Such rules, the Commission finds, would unfairly discriminate against unprotected stations, would afford only such limited protection that they appear to be economically infeasible, and would be substantially different from the cable syndicated exclusivity rules referenced in the SHVA.

4. Finally, the Commission concludes that the cost of preventing viewing by a relatively few authorized HSD owners for a short period of time is more than incrementally greater than the cost of cable syndicated exclusivity, and consequently, promulgation of rules for satellite carriers similar to those for cable is economically infeasible. The Commission also notes that pursuant to the SHVA, all satellite carriers and Direct Broadcast Satellite (DBS) operators will be fully liable for the copyrights to retransmitted program material after the interim compulsory copyright license expires at the end of 1994.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5441 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 383

[FHWA Docket No. MC-89-9]

RIN 2125-AC24

Minimum Uniform Standards for Biometric Identification System to Ensure Identification of Operators of Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rule making; additional information.

SUMMARY: The FHWA is providing additional information concerning the ANPRM issued May 15, 1989, 54 FR 20875. The rulemaking, undertaken in response to Congress' enactment of the Truck and Bus Safety and Regulatory Reform Act of 1988, section 9105, sought comments on the establishment of a biometric identifier for operators of commercial motor vehicles (CMVs). The results of the pilot study which was conducted concurrently with the rulemaking, as well as the comments received in response to the ANPRM, indicate that the establishment of a biometric identifier at this time is premature and not justified. This notice summarizes the comments to the ANPRM as well as the results of the pilot study which demonstrate the significant shortcomings of the technologies investigated. When information is available to show that a biometric identifier would be beneficial to the CDL program and the technology has been developed, or can be developed, to meet appropriate functional requirements, the FHWA will continue the rulemaking process with a notice to propose standards for a biometric identifier.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Harbaugh, Standards Review Division, Office of Motor Carrier Standards (202) 366-4009, or Mr. Paul Brennan, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On May 15, 1989, the FHWA published an ANPRM in the Federal Register (54 FR 20875) seeking public comment concerning the establishment of a biometric identifier to ensure the unique and positive identification of commercial driver's license (CDL) holders. This action was undertaken pursuant to section 9105(a) of the Truck

and Bus Safety and Regulatory Reform Act of 1988 (1988 Act), [Pub.L. 100-690, 102 Stat. 4181, 4527, 49 U.S.C. App. 2706 note] which directs the Secretary of Transportation to issue, by December 31, 1990, regulations establishing, for purposes of section 12007 and 12009 of the Commercial Motor Vehicle Safety Act of 1986 (1986 Act), [Pub. L. 99-570, 100 Stat. 3201-170, 49 U.S.C. App. 2701] minimum uniform standards for a biometric identification system for operators of CMVs. Such a system would provide positive identification of drivers in the commercial driver's license information system (CDLIS) and would serve as a further constraint against drivers obtaining more than the one CDL permitted under the 1986 Act.

Currently, the CDL program uses a cluster of personal and descriptive data to uniquely identify license applicants. The specific items included in this cluster and used in the automated matching process are: driver's name, date of birth, social security number (SSN), license number and State of issuance. In addition, sex, height, weight and eye color are available to licensing officials at the counter. A variety of procedures are used within the framework of CDLIS to analyze the identifying information, including name reduction via a soundex-type equivalent, substitution of nicknames, deviations on birth dates, and deviations on SSN. These procedures, completed before the driver is issued a CDL, produce a match or matches if the driver appears to already be included in the CDLIS as a CDL holder. Such a match is then reported to the inquirer for further evaluation to properly identify the driver and assure that he or she has not been previously issued a CDL in another State.

Pursuant to the 1988 Act, the FHWA sponsored a pilot project to demonstrate and study the use of biometric identification systems for ensuring positive identification of operators of CMVs. Retinal scan and automated fingerprint identification systems (AFIS) technologies were tested within a driver licensing environment in four States. The results of the pilot demonstration project are discussed later in this document.

Discussion of Comments

Seventeen parties submitted comments to the docket of the ANPRM. Commenters included ten States, the National Transportation Safety Board (NTSB), the International Brotherhood of Teamsters (Teamsters) and the Owner-Operator Independent Drivers Association (OOIDA), American

Trucking Associations (ATA), National Industrial Transportation League (NIT League), American Automobile Association (AAA), and an individual truck driver.

The ATA and NTSB expressed strong support for the expeditious adoption of a biometric identifier. Both believe it is an essential part of the one-license concept and that the system is vulnerable to abuse without it. The ATA favors the retinal scan over the AFIS technology and wants to see biometric capability at roadside inspection sites.

The Teamsters and the OOIDA expressed equally strong opposition to the adoption of a biometric identifier, as did the individual driver. The Teamsters expressed the belief that very few drivers would try to maintain multiple licenses after 1992. The Teamsters believe, "The safety benefits of 'catching' or deterring multiple license use in this small number of drivers must be considered in view of the monetary, time, 'hassle' and privacy costs to five million commercial drivers." Based on these costs the Teamsters comments suggested that the tolerable error rate for a biometric identification system should be very near zero. The OOIDA opposes "measures that single out truck drivers to be automatically treated as criminals with no benefit to highway safety." It is also concerned about the possible use of the identifier as a device to harass drivers with frequent roadside biometric checks and the potential for false negatives at the roadside with the ensuing consequences for the drivers. Further, "... the number of additional drivers who hold multiple licenses that will be eliminated as a result of the biometric identifier is minuscule."

The ten States that responded generally expressed interest in the results of the pilot demonstration project and concern about the cost of a program to implement a biometric identifier. Many wanted the FHWA to provide additional time to allow all States to fully implement the current system and evaluate its effectiveness, and to more fully assess the costs and benefits of a biometric system. Most wanted to be sure that error rates were very low; the rates suggested by the various States ranged from a high of less than five percent, to lows of a general error rate of less than one in 1000, no more than one significant match problem per month, or simply an overall error rate of zero. The States that issue licenses over the counter generally were concerned about response time. Some States indicated they want a system response time within minutes for an initial enrollment of a driver, and verification

within seconds of the identity of a driver who has previously been enrolled; others are willing to wait several days for enrollment. In any event, the overall sentiment expressed in comments from the States was a desire to wait until the CDL program is well underway before requiring a biometric identifier.

The AAA and the NIT League both expressed concerns about costs and interest in the pilot study. The AAA stated that the deadline was tight and that implementation should not take place until it could be achieved in an economical manner.

Biometric Studies

In 1988, The Orkand Corporation, under a contract funded by the FHWA, produced a report entitled "Functional Description for a Unique Identification System for the Commercial Driver's License Information System" that evaluated biometric identifiers. This report concluded that two biometric technologies—retinal scanning and AFIS—should be considered to identify commercial drivers. The report also recommended careful testing of biometric systems in a driver licensing environment prior to considering a full-scale implementation program.

At the direction of the FHWA, the State of California, Department of Motor Vehicles (CDMV), in conjunction with a committee of States, including Indiana, North Carolina and Texas, as well as the American Association of Motor Vehicle Administrators (AAMVA) and the FHWA, assessed the feasibility of biometric identifier technologies in the driver licensing environment. The "Feasibility Study Report," which was published in December 1988, recommended that both retinal scan and AFIS technologies be tested within a driver licensing environment to determine which technology would best satisfy the national CDL program effort and the one-license provision of the 1986 Act. The "Feasibility Study Report" also identified an initial set of functional requirements (as described below) that should be satisfied by the system design of any biometric identifier system in order to be feasible for commercial driver licensing.

As recommended in the "Feasibility Study Report," both retinal scan and AFIS technologies were tested in a pilot project directed by the CDMV and the same committee. Both technologies were assessed to determine the ability of each to meet the requirements outlined in the "Feasibility Study Report." The study, entitled "Personal Identifier Project: Final Technical Report" and published in May 1990, concluded that neither

technology meets the functional requirements.

Functional Requirements and Findings

The pilot project was intended to be a demonstration of the two biometric technologies. While the project attempted to address the functional requirements set forth in the "Feasibility Study Report," certain of these could not be addressed by this project. Others were not addressed completely and will require additional analysis. The report on the pilot demonstration project has been placed in the public docket and is available for review.

The functional requirements that were addressed by the pilot together with the corresponding findings of the pilot study are as follows:

Minimal processing time: The system must capture the biometric identifier from each applicant without increasing the net transaction processing time (the actual time a customer is in a DMV office). The "Feasibility Study Report" suggested that net transaction processing time should not be increased by more than 30 seconds.

Findings: The pilot study showed that the average time required for capturing the biometric samples range from 1:13 minutes for rolled fingerprints, 2:03 minutes for retinal scan, to 2:35 minutes for live scan fingerprints. However, not all of this time would impact the total amount of time needed to process CDL applicants depending on how data capture is integrated with normal office routine.

Uniqueness: The biometric identifier must be an accurate, relatively unalterable, unique, physical characteristic that can be captured, recognized or verified and stored and that is verifiable over an indefinite period of time.

Findings: The verification of the biometric record is addressed under *Accuracy rates*.

Public acceptance: The method of capturing the biometric identifier must be unobtrusive to the applicant. The method must be socially acceptable and not endanger the health, safety, or welfare of any applicant.

Findings: A survey of persons who participated in the collection of biometric samples showed that the technology was considered acceptable by 96.48% of the participants involved in the fingerprint technology and 93.44% of the participants involved in the retinal scan technology.

Accuracy rates: The system of capturing, recognizing or verifying and storing each applicant's biometric record must have been previously tested

for accuracy in an environment that proximates that of the CDLIS with an acceptable error rate. The "Feasibility Study Report" established a goal of 99.5%.

Findings: Neither technology met the goal for accuracy rates of 99.5% or better in all test categories, although the rates were better for fingerprints than retinal scan. Among the accuracy tests were those for correct issuance and correct denial during the initial enrollment of the driver, and again, correct issuance and correct denial during verification, or the renewal of the license. Accuracy rates for the two technologies are:

	AFIS (percent)	Retinal scan (percent)
Test for:		
Enrollment: Correct		
Issuance	98.46	96.59
Enrollment: Correct		
Denial	92.01	69.08
Verification: Correct		
Denial	100.00	100.00
Verification: Correct		
Issuance	92.41	84.20

Ease of operation: The system must be simple to use. Its use must be easily understood by employees and must be easy to explain to the States' applicants whether they are English or non-English speaking.

Findings: A survey of driver licensing employees operating the biometric collection instruments indicated that all methods were considered relatively easy to use.

Candidate lists: The system must be capable of accurately accomplishing proper identification without a candidate list for virtually all of the applications. The "Feasibility Study Report" suggested that 99.9% of the identifications should be without a candidate list.

Findings: A candidate list was produced for 0.20% to 2.29% of searches for two different tests for fingerprint technology and for 1.35% to 1.75% for retinal scan.

Standards for data exchange: The system must be capable of interfacing with other biometric identifier systems using the same type of biometric identifier and meeting standards of data exchange recognized by the AAMVA now or in the future for the biometric identifier captured. If the biometric identifier is an automated fingerprint, the interface must meet American National Standards Institute standards.

Findings: Although fingerprint vendors generally comply with the mandatory portions of existing standards, no two systems are

compatible beyond full image level. Since there is only a single vendor of retinal scan technology there are no standards for the interchange of this information.

Response time: The system must be able to search and compare new biometric identifiers against stored records. The system must also be capable of performing verifications on previously established biometric records. The recognition process must be accomplished within an acceptable amount of elapsed time after receipt of the inquiry, and verification processes must be accomplished within a very short time from the receipt of the inquiry. The "Feasibility Study Report" suggested that these response times should be 72 hours for an initial enrollment and five seconds for verification of an identity for license renewal.

Findings: The pilot study suggested factors to be considered and noted that there would be trade-offs between response time and cost.

System capacity: During the initial enrollment process (conversion) for previously licensed commercial drivers, the biometric data base file will grow from zero records to 5 million records. Therefore, during the conversion, the system must be capable of searching and comparing the 5 million current records and the 500,000 new CDLs issued each year against this growing data base. Once the biometric records on existing commercial drivers have been captured, compared and stored, the system must be capable of annually recording, comparing, and storing 500,000 new CDL applicants' biometric records. The system must also be capable of annually verifying the biometric records on 1.25 million CDL renewal applicants, 250,000 interstate residency change applicants, 90,000 applicants seeking duplicate (replacement) licenses and the anticipated 5% a year growth in these types of applications.

Findings: This requirement was not addressed directly because the pilot study by its nature had only a limited number of drivers. However, it was noted that there are trade-offs between length of conversion period and costs. A longer conversion period would decrease, and a shorter period could greatly increase, the resources needed for conversion.

Although the following requirements were not addressed by the pilot, they are discussed here so that practical needs related to development of a biometric identification system to be used in a commercial driver licensing environment are understood. The

committee of States, which developed these functional requirements, did so based on its detailed understanding of driver licensing procedures, resource requirements and day-to-day operational aspects of licensing large numbers of drivers. These requirements are as follows:

Management information: The system must have a method of capturing, storing, and reporting management information, such as the number of new biometric records accepted, the number of biometric records verified, the number of applicants the system was unable to "enroll," measurements of the quality of the information captured, system down time, the system errors by type, and average enrollment processing time on a daily, weekly and monthly basis.

Compatible with CDLIS: The system must be compatible with and capable of interfacing with the CDLIS designed pursuant to the 1986 Act.

Uninterrupted service: The system must be reliable, allowing the States to provide uninterrupted service to their applicants. Because the data capture and central matching units used in the demonstration systems were not representative of those that would be used in a full production system to identify 5 million commercial drivers, no conclusions were drawn on the ability of the two biometric systems to provide uninterrupted service.

Verification of Acceptability of Sample: Any biometric identifier capturing device must provide on-site, immediate identification of whether or not an acceptable biometric sample has been obtained, thereby guarding against the need for customers to make return visits to the local offices solely to recapture their biometric records. To do so, the quality of the captured images must be consistently good and there must be quality control at the point of data collection.

Procurement options: To encourage maximum biometric system participation by the States in a nationwide program, the system must offer sufficient flexibility in procurement options and the capture and transmission of the biometric data.

Incorporation onto a data carrier card: The verification template/minutiae must be capable of being incorporated on a data carrier card issued in the form of a driver's license.

Remote Verification: The system must have the potential for remote verification when used with a data carrier license document.

In addition, the pilot study assessed the costs that would be associated with

each of the systems. Estimated costs for operating the central systems for the initial four years are \$16.9 million for the fingerprint system and \$5.1 million for the retinal scan system. These cost figures are estimates based on a system design configured for a projected verification response and five million record data base.

The pilot project also provided cost estimates for data capture equipment. An automated data capture station for fingerprints is estimated to cost less than \$10,000. If fingerprints are collected manually, a manually rolled print collection station costs under \$200, and the card entry workstation, which is used to convert fingerprint cards, costs approximately \$104,000. The cost for a retinal scan data capture unit is approximately \$6,575.

In addition to these estimates of equipment costs, total system costs would include estimates of the amount of equipment needed throughout the system as well as transmission and personnel costs.

Conclusion

The pilot study clearly shows that neither of the systems meets the functional requirements set forth in the "Feasibility Study Report." Most notably, accuracy rates are lower overall than those recommended in the "Feasibility Study Report." While the accuracy rate associated with the AFIS system is better than that of the retinal scan, improvement is still necessary to meet criteria recommended by CDMV and the committee of States.

Further cost estimates also need to be obtained. Decisions concerning the type and configuration of the system may need to be made before these can be completed.

Other information, not directly related to biometric technology, also needs to be obtained. In order to determine the benefits of a biometric system, information is needed concerning the effectiveness of the current system of identifying drivers within the CDLIS, including estimates of how many drivers attempt to circumvent, and succeed in circumventing, the current system and receive more than one commercial driver's license. This information is needed before the costs and benefits of a biometric system can be determined.

It is also clear that more time is needed so that the technology has an opportunity to develop to meet the functional requirements recommended by the "Feasibility Study Report." It may also be desirable to review some of the functional requirements in light of the continuing experience with biometric technology and evolving needs of the

States. Therefore, the FHWA intends to defer further rulemaking action and continue to require an identification process for drivers using the CDLIS with the required array of personal identification information. In the interim, the FHWA will complete and make available the results of several studies designed to address the effectiveness of the current identification system. We are planning a study to look more closely at the validity of social security numbers for identification that drivers are using to obtain CDLs. We are considering other studies to look specifically at the magnitude of the multiple license problem for drivers who have been issued CDLs and also to look at the array of information that is used by States and in the CDLIS to identify drivers. The results of these studies will be published and assessed in terms of the need for a biometric identifier.

Development of the biometric technologies will be closely monitored. These technologies are, at this time, developing rapidly and monitoring private sector development appears to be the appropriate course. However, at such time as needed, the FHWA will consider research, controlled testing and other appropriate measures to help determine when technology will be available to meet the needs of the States. When information is available to show that a biometric identifier would be beneficial to the CDL program and the technology has been developed, or can be developed, to meet appropriate functional requirements, the FHWA will propose standards for a biometric identifier.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 383

Commercial driver's license standards requirements and penalties, Highways and roads, Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety)

(Authority: Sec. 9105 of Pub. L. 100-690, 102 Stat. 4181, 4527).

Issued on: February 27, 1991.

T. D. Larson,
Administrator.

[FR Doc. 91-5455 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91-11; Notice 1]

RIN 2127-AD81

Federal Motor Vehicle Safety Standards; Rearview Mirrors—Reflectance

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a petition from Donnelly Corporation, this notice proposes amending the requirements in Federal Motor Vehicle Safety Standard No. 111, *Rearview Mirrors*, with respect to average reflectance levels. The proposal would clarify the intent and applicability of the provision. It would also serve to update the standard to better address current mirror designs and to remove a perceived design restriction about certain designs, thus facilitating the introduction of new mirror designs which may provide better glare protection.

DATES: Comments on this notice must be received on or before April 22, 1991.

Proposed Effective Date: The amendments would become effective 30 days after publication of the final rule.

ADDRESSES: All comments on this notice should refer to Docket No. 91-11; Notice 1 and be submitted to the following: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366-5307.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 111, *Rearview Mirrors*, is intended to reduce the number of crashes that occur because the driver of a motor vehicle does not have a clear and reasonably unobstructed view to the rear.

As initially promulgated, Standard No. 111's mirror construction requirements specified that the

reflectance levels for mirrors be at least 35 percent (32 FR 2413, February 3, 1967). The standard further stated that for selective position prismatic mirrors, the reflectance level in the night driving position had to be at least 4 percent. A selective position prismatic mirror contains two settings that can be mechanically tilted to provide surfaces with two different reflectance levels. The first setting provides relatively high levels of reflectance, typically of 85 to 90 percent, for day time driving; and the second setting provides reflectance levels of at least 4 percent to reduce glare from the headlights of following vehicles during night time driving. Installation of these two-position selective position prismatic mirrors has been the principal method of enabling drivers to reduce glare during night time driving. Approximately 90 percent of vehicles are currently equipped with center-mounted interior mirrors of the selective position prismatic type.

The agency subsequently amended Standard No. 111's mirror construction requirement to specify that the "average" reflectance level of the reflective film used on any mirror must be at least 35 percent. In adopting this amendment about average reflectance, the agency explained that the amendment was intended to "make clear that the failure of any individual point or points on the reflective surface of a mirror to reflect 35 percent of a light source does not constitute a failure to comply with the standard if the average reflectance of the total points comprising the reflective surface is at least 35 percent." (41 FR 36023, August 26, 1976)

The current language of the requirement in S11 for mirror construction is as follows:

The average reflectance value of the reflective film employed by any mirror required by this standard, determined in accordance with SAE Recommended Practice J964a, August 1974, shall be at least 35 percent. If a mirror is of the selective position prismatic type, the reflectance value in the night driving position shall be at least 4 percent.

Several manufacturers, including General Motors, Chrysler, Ford, BMW, and Range Rover, have equipped vehicles with electrochromic mirrors. These mirrors electrically adjust their reflectance levels based on the amount of light striking the mirror and automatically vary the reflectivity. These manufacturers therefore have concluded that the standard is not design restrictive and does not preclude the use of electrochromic mirror technology.

However, other manufacturers have interpreted this provision as prohibiting low reflectance mirrors other than selective position prismatic ones. For instance, on June 12, 1990, Donnelly Corporation, petitioned the agency to amend S11 to permit the installation of its electrochromic mirror. Along with electrically adjusting its reflectance levels based on the amount of light striking the mirror, this mirror varies the reflectivity between the minimum of 35 percent during daytime conditions and a minimum of 4 percent during nighttime conditions. According to the petitioner, its automatically adjustable non-prismatic electrochromic mirror is not permitted to have a minimum night position less than 35 percent because S11 states the reflectance of 4 percent in the night driving position is only for selective position prismatic mirrors.

Donnelly therefore concluded that S11 should be modified to remove what it views as a design-specific requirement. It claimed that these mirrors improve vision and reduce glare during night driving. It also claimed that its mirror is the first commercially viable means for reducing glare for exterior mirrors. The petitioner further believed that when the requirement permitting selective position prismatic mirrors was issued, these were the only known glare reducing mirrors.

Based on its initial review of the petition, NHTSA granted the petition on August 30, 1990. After further review, the agency has decided to issue this notice proposing to amend S11 of Standard No. 111 to avoid express reference to selective position prismatic mirrors. The agency has tentatively determined that this amendment is necessary to clarify the intent and applicability of the provision given its apparent ambiguity. It would also serve to remove a perceived design restriction about certain mirror designs. Such an amendment is consistent with the agency's philosophy of promulgating standards that are as performance-oriented as possible, consistent with the goal of obtaining specific types of safety performance. While the prismatic mirror was the principal, perhaps only, known glare-reducing mirror technique when the standard was initially promulgated, several new technologies now offer other means for glare reduction. NHTSA believes that adoption of the proposal would facilitate the production of new mirror designs that may improve motor vehicle safety. These new technologies may provide better glare protection because they automatically adjust reflectance levels in relation to the light

source. In addition, the electrochromic mirrors can be used as exterior mirrors.

Accordingly, the agency proposes to amend S11 by deleting reference to "selective position prismatic type" mirrors. In its place, S11 would refer to mirrors "capable of multiple reflectance levels." The agency welcomes comments about the need for this proposed amendment.

This notice also proposes to amend S11 to delete reference to the "reflectance value of the reflective film" because this phrase has the potential of being unnecessarily design restrictive. The agency is aware of certain mirrors which rely on a substance other than a film for their reflectance value. For instance, one electrochromic mirror uses a gelatinous electrochromic layer between two sheets of glass instead of a film. Accordingly, because language specifying a reflective film may not adequately include the technology used in all current and future mirrors, the agency has decided to propose making the requirement more general.

This notice also proposes to amend S11 by updating the reference to the Society of Automotive Engineers' (SAE) more recent Recommended Practice. While S11 of Standard No. 111 currently refers to SAE Recommended Practice J964a, August 1974, the SAE reaffirmed this Recommended Practice without substantive changes in October of 1984. To reflect this change, this notice proposes to refer to the J964 OCT84 practice.

NHTSA notes that section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. The agency has tentatively concluded that there would be "good cause" not to provide the full 180 day lead-in period given that this amendment would remove a restriction and facilitate the introduction of certain mirrors without imposing any mandatory requirement on manufacturers. In addition, the public interest would be served by not delaying the introduction of mirrors that may provide better performance without having any negative impact on safety. Therefore, the agency has tentatively determined that there is good cause to propose an effective date 30 days after publication of the final rule.

Regulatory Impacts

NHTSA has determined that this proposed rule is not a major rule under Executive Order 12291 nor a significant rule within the meaning of the

Department of Transportation's regulatory policies and procedures. A full regulatory evaluation is not required because the rule, if adopted, would have minimal economic impacts. The proposal would permit new mirror designs by removing a design restriction instead of imposing any new requirements on mirror or vehicle manufacturers. Therefore, the agency does not anticipate any significant additional costs or any cost savings.

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Based upon the agency's evaluation, I certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Vehicle manufacturers typically would not qualify as small entities. While some manufacturers of mirrors may be small entities, the agency believes that the proposed amendment would not have a significant economic impact on them. This amendment would also affect small businesses, small organizations, and small governmental units to the extent that these entities purchase motor vehicles with new mirror designs. As the preceding discussion indicates, the agency's assessment is that this amendment would have no significant cost impact to the industry. Therefore, it would not result in a significant increase in consumer prices.

As it is required to do under the National Environmental Policy Act of 1969, NHTSA has considered the environmental impact of this proposal and determined that this rule would not have any significant impact on the quality of the human environment.

Further, this rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. It has been determined that it would have no Federalism implication that warrants preparation of a Federalism report.

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business

information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend part 571 of title 49 of the Code of Federal Regulations as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.111, S11 would be amended to read as follows:

§ 571.111 Standard No. 111; Rearview mirrors.

S11. Mirror Construction. The average reflectance of any mirror required by this standard shall be determined in accordance with SAE Recommended Practice J964, OCT84. All single reflectance mirrors shall have an average reflectance of at least 35 percent. If a mirror is capable of multiple reflectance levels, the

reflectance in the night position or mode shall be at least 4 percent. When a multiple reflectance level mirror is in the day position or mode, or not powered, it shall provide a reflectance level of at least 35 percent.

Issued on: March 4, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-5475 Filed 3-7-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Availability of an amendment to a fishery management plan and a minority report, and request for comments.

SUMMARY: NOAA announces that the Gulf of Mexico Fishery Management Council has submitted Amendment 3 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico for review by the Secretary of Commerce (Secretary). Written comments are requested from the public.

DATES: Written comments must be received on or before May 1, 1991.

ADDRESSES: Copies of Amendment 3 and the minority report may be obtained from the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609. Comments should be sent to Robert A. Sadler, Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3722.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary immediately publish a notice that the document is available for public review and comment. The Secretary will consider public comment in determining approvability of the document.

Amendment 3 proposes to (1) extend the target date for rebuilding the red

snapper resource from January 1, 2000, to January 1, 2007; (2) add to the management measures that may be implemented or modified via the FMP's framework procedure the setting of target dates for rebuilding overfished reef fish stocks, with an upper limit for the rebuilding periods not exceeding 1.5 times the generation time of the species

under consideration; and (3) transfer speckled hind from the shallow-water to the deep-water grouper complex.

A minority report objects to the proposed upper limit for the determinations of rebuilding periods.

Proposed regulations to implement Amendment 3 are scheduled for publication within 15 days.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 4, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-5532 Filed 3-5-91; 2:02 pm]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 56, No. 46

Friday, March 8, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-91-005]

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: March 26, 1991.

Time: 1 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27607.

Purpose: To review regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*), to hear persons who have asked to address the Committee and who have been scheduled to do so, and to discuss the level of tobacco inspection and related services. In particular, the committee will consider an increase in the user fee to recover costs involved in the inspection and grading of tobacco sold at designated auction markets beginning with the 1991-92 selling season.

The meeting is open to the public. Persons other than members who wish to address the committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: March 4, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-5482 Filed 3-7-91; 8:45 am]

BILLING CODE 3410-02-M

[TB 90-008]

Tobacco Inspection—Growers' Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This notice announces that a referendum will be conducted by mail during the period March 11-15, 1991, for active producers of flue-cured tobacco residing in the counties of Ben Hill, Berrien, Coffee, Irwin, Tift, Turner, Telfair, and Wilcox, Georgia, to determine producer approval of the designation of Ocilla, Georgia, as a designated tobacco auction market and to merge it with Fitzgerald, Georgia.

DATES: The referendum will be held March 11-15, 1991.

FOR FURTHER INFORMATION CONTACT: Ernest L. Price, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456; Telephone Number (202) 447-2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of Ocilla, Georgia, as a designated tobacco auction market and to merge it with Fitzgerald, Georgia.

On August 31, 1990, an application was made to the Secretary of Agriculture to designate Ocilla as a new market and to merge it with Fitzgerald. The application, filed by warehouse operators in Fitzgerald, was made pursuant to regulations promulgated under the Tobacco Inspection Act (7 CFR 29.1-29.3).

On November 2, 1990, a public hearing was held in Ocilla, Georgia, pursuant to the regulations. A review Committee, established pursuant to § 29.3(h) of the regulations (7 CFR 29.3(h)), has reviewed and considered the application, the testimony presented at the hearing, and the exhibits received in evidence, and other available information. The Committee recommended to the Secretary that the application be granted and the Secretary

approved the application on February 28, 1991.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor the designation. It is hereby determined that the referendum will be held by mail during the period of March 11-15, 1991. The purpose of the referendum is to determine whether farmers favor or oppose the designation of Ocilla as a market for the 1991 and succeeding crop years and to merge it with the currently designated market of Fitzgerald. Accordingly, if a two-thirds majority of those tobacco producers voting in the referendum favor this designation, Ocilla will be formally designated as a new market and merged with Fitzgerald.

To be eligible to vote in the referendum a tobacco producer must be an active grower residing in the counties of Ben Hill, Berrien, Coffee, Irwin, Tift, Turner, Telfair, and Wilcox, Georgia. Any farmer who believes he or she is eligible to vote in the reference but has not received a mail ballot by March 11, 1991, should immediately contact Ernest L. Price, Director, Tobacco Division, AMS, USDA, at (202) 447-2567.

The referendum will be held in accordance with the provisions for referenda of the Tobacco Inspection Act, as amended, (7 U.S.C. 511d) and the regulation for such referendum set forth in 7 CFR 29.74.

Dated: March 4, 1991.

Daniel Haley,

Administrator.

[FR Doc. 91-5483 Filed 3-7-91; 8:45 am]

BILLING CODE 3410-02-M

Cooperative State Research Service Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Pub. L. 92-463, 86 stat. 770-776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.

Date: May 15-17, 1991.

Time: 8:30 a.m.-5 p.m.

Place: USDA, Cooperative State Research Service, room 338 A&B Aerospace Building, 901 D Street, SW., Washington, DC.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.

Contact person for agenda and more information: Dr. Edward M. Wilson, U.S. Department of Agriculture, Cooperative State Research Service, Room 328, Aerospace Building, Washington, DC 20250-2200, telephone: 202-401-6040.

Done at Washington, DC this 27th day of February, 1991.

John Patrick Jordan,

Administrator, Cooperative State Research Service.

[FR Doc. 91-5550 Filed 3-7-91; 8:45 am]

BILLING CODE 3410-22-M

Federal Grain Inspection Service

Request for Designation Applicants to Provide Official Services in the Geographic Areas Currently Assigned to the Denver (CO) and East Indiana (IN) Agencies and the State of Kansas (KS)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic areas currently assigned to these specified agencies. The official agencies are Hutchings, Inc., dba Denver Grain Inspection (Denver), East Indiana Grain Inspection, Inc. (East Indiana), and the Kansas State Grain Inspection Department (Kansas).

DATES: Applications must be postmarked on or before April 8, 1991.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Denver, located at 6210 Brighton Blvd, Commerce City, CO 80022, East Indiana located at 3508 North Walnut Street, Muncie IN 47303, and Kansas located at 700 Jackson, Suite 800, Jayhawk Towers, Topeka, KS 66601-1918 were designated under the Act on September 1, 1988, as official agencies to provide official inspection services.

The designations of these official agencies terminate on August 31, 1991. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Denver, in the States of Colorado, Nebraska, and Wyoming, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Colorado: the entire State.

In Nebraska:

Bounded on the North by the northern Scotts Bluff County line; the northern Morrill County line east to Highway 385; Bounded on the East by Highway 385 south to the northern

Cheyenne County line; the northern and eastern Cheyenne County lines; the northern and eastern Deuel County lines;

Bounded on the South by the southern Deuel, Cheyenne, and Kimball County lines; and

Bounded on the West by the western Kimball, Banner, and Scotts Bluff County lines.

In Wyoming: Goshen and Platte Counties.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Albin Elevator, Albin; Farmers Co-op, Burns; Carpenter Elevator, Carpenter; Pillsbury Company, Egbert; and Pine Bluffs Feed and

Grain, Pine Bluffs, all in Laramie County, Wyoming (located inside Wyoming Department of Agriculture's area).

Exceptions to Denver's assigned geographic area are the following locations inside Denver's area which have been and will continue to be serviced by the following official agency:

Hastings Grain Inspection, Inc.; Farmers Coop, and Big Springs Elevator, both in Big Springs, Deuel County, Nebraska.

The geographic area presently assigned to East Indiana, in the States of Indiana and Ohio, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Indiana:

Bounded on the North by the northern Lagrange and Steuben County lines;

Bounded on the East by the eastern Stueben, De Kalb, Allen, Adams, Jay, Randolph, Wayne, and Union County lines;

Bounded on the South by the southern Union and Fayette County lines; the eastern Rush County line south to State Route 244; State Route 244 west to the Rush County line; and

Bounded on the West by the western Rush and Henry County lines; the southern Madison County line west to State Route 13; State Route 13 north to State Route 132; State Route 132 northwest to Madison County; the western and northern Madison County lines; the northern Delaware County line; the western Blackford County line north to State Route 18; State Route 18 west to County Highway 900E; County Highway 900E north to Huntington County; the southern Huntington and Wabash County lines; the western Wabash County line north to State Route 114; State Route 114 northwest to State Route 19; State Route 19 north to Kosciusko County; the western and northern Kosciusko County lines; the western Noble and Lagrange County lines.

In Ohio: Darke County.

The following location, outside of the above contiguous geographic area, is part of this geographic area assignment: Payne Cooperative Association, Payne, Paulding County, Ohio (located inside Lima Grain Inspection Service, Inc.'s area).

The geographic area presently assigned to Kansas, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Kansas.

Interested parties, including Denver, East Indiana, and Kansas, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic areas, as specified above, under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning September 1, 1991, and ending August 31, 1994. Parties wishing to apply for designation should contact the Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 14, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-5462 Filed 3-7-91; 8:45 am]

BILLING CODE 3410-EN-F

Designation Renewal of the Gibson City (IL) and Indianapolis (IN) Agencies and the State of Wyoming (WY)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Donald Swanstrom dba Gibson City Grain Inspection Department (Gibson City), Indianapolis Grain Inspection & Weighing Service, Inc. (Indianapolis), and the Wyoming Department of Agriculture (Wyoming) as official agencies responsible for providing official services under the U.S. Grain Standards Act, as amended (Act).

EFFECTIVE DATE: April 1, 1991.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Gibson City's, Indianapolis', and Wyoming's designations terminate on March 31, 1991, and requested applications for

official agency designation to provide official services within specified geographic areas in the October 1, 1990, **Federal Register** (55 FR 39995). Applications were to be postmarked by October 31, 1990. Gibson City, Indianapolis, and Wyoming were the only applicants, and each applied for the entire area currently assigned to that agency.

The Service announced the applicant names in the December 3, 1990, **Federal Register** (55 FR 49927) and requested comments on the applicants for designation. Comments were to be postmarked by January 17, 1991. No comments were received.

The Service evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and in accordance with Section 7(f)(1)(B), determined that Gibson City, Indianapolis, and Wyoming are able to provide official services in the geographic areas for which the Service is renewing their designation.

Effective April 1, 1991, and terminating March 31, 1994, Gibson City, Indianapolis, and Wyoming are designated to provide official inspection services in their specified geographic areas, as previously described in the October 1 **Federal Register**.

Interested persons may obtain official services by contacting Gibson City at 217-784-5411, Indianapolis at 317-782-8938, and Wyoming at 307-777-7321.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 14, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-5463 Filed 3-7-91; 8:45 am]

BILLING CODE 3410-EN-F

Designation of Springfield Grain Inspection Service, Inc., in the Springfield, Illinois, Geographic Area (IL)

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice announces the designation of Springfield Grain Inspection Service, Inc. (Springfield), as an official agency responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act), in the Springfield, Illinois, geographic area.

EFFECTIVE DATE: April 1, 1991.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building,

P.O. Box 96454, Washington, DC 20090-6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-447-8525

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Glen Wallace dba Springfield Grain Inspection Department, Springfield, Illinois, had requested cancellation of his designation, effective March 31, 1991, and requested applications for official agency designation to provide official services within the specified geographic area in the October 1, 1990, **Federal Register** (55 FR 39996). Applications were to be postmarked by October 31, 1990. Springfield was the only applicant for designation and applied for the entire area.

The Service announced the applicant names in the December 3, 1990, **Federal Register** (55 FR 49927) and requested comments on the applicants for designation. Comments were to be postmarked by January 17, 1991. No comments were received.

The Service evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and in accordance with Section 7(f)(1)(B), determined that Springfield is able to provide official services in the geographic area for which the Service is designating it.

Effective April 1, 1991, and terminating March 31, 1994, Springfield is designated to provide official inspection services in its specified geographic area, as previously described in the October 1 **Federal Register**.

Interested persons may obtain official services by contacting Springfield at 217-522-5233.

AUTHORITY: Pub. L. 94-82, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 14, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-5464 Filed 3-7-91; 8:45 am]

BILLING CODE 3410-EN-F

Request for Comments on the Designation Applicants in the Geographic Areas Currently Assigned to the Sioux City (IA) and Tischer (IA) Agencies

AGENCY: Federal Grain Inspection Service (Service).

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic areas currently assigned to the Sioux City Inspection and Weighing Agency, Inc. (Sioux City), and A. V. Tischer and Son, Inc. (Tischer).

DATES: Comments must be postmarked on or before April 22, 1991.

ADDRESSES: Comments must be submitted in writing to Paul Marsden, RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454. *SprintMail* users may respond to [PMARSDEN/FGIS/USDA]. *Telecopier* users may send responses to the automatic telecopier machine at 202-447-4628, attention: Paul Marsden.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, S.W., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Paul Marsden, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the January 2, 1991, *Federal Register* (56 FR 64). Applications were to be postmarked by February 1, 1991.

Sioux City applied for designation renewal in the entire area currently assigned to that agency, except for: Farmers Elevator Company, and Feeders Mill & Elevator, Inc., both in Platte, Charles Mix County, South Dakota (located inside Aberdeen Grain Inspection, Inc.'s area (Aberdeen)); Charter Oak Grain & Seed, and Delanty Grain Company, both in Charter Oak, Crawford County, Iowa (located inside Fremont Grain Inspection Department, Inc.'s area (Fremont)); and Gooch Seed Mill, and Ernie's Seed & Field Service, both in Storm Lake, Buena Vista County, Iowa (located inside Tischer's area).

Tischer applied for designation renewal in the entire area currently assigned to that agency, as well as Gooch Seed Mill, and Ernie's Seed & Field Service, both in Storm Lake, Buena Vista County, Iowa. Aberdeen applied for Farmers Elevator Company, and Feeders Mill & Elevator, Inc., both in Platte, Charles Mix County, South

Dakota. Fremont applied for Charter Oak Grain & Seed, and Delanty Grain Company, both in Charter Oak, Crawford County, Iowa. The Tischer, Aberdeen, and Fremont agencies are contiguous to the Sioux City agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the *Federal Register*, and the applicants will be informed of the decision in writing.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: February 14, 1991.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 91-5465 Filed 3-7-91; 8:45 am]

BILLING CODE 3410-EN-F

Forest Service**Augur Creek Timber Sale, Fremont National Forest, Lake County, OR**

AGENCY: Forest Service, USDA.

ACTION: Revision of a notice of intent to prepare an environmental impact statement.

SUMMARY: Fremont National Forest decision to harvest timber within the Lakeview Federal Sustained Yield Unit (FSYU) will be appealable under 36 CFR part 217 at the time the decision is made. This will allow the public to address concerns related to environmental issues before the sale is advertised. Hearings will continue to be available for sales within the Lakeview FSYU, but they will be limited to questions of advantages and disadvantages of the sale relative to the stability of affected communities (36 CFR 223.117).

With this change, specific environmental issues will be addressed earlier in the process under 36 CFR part 217 so that any needed modifications can be made more efficiently. We believe this change will provide more effective public participation and result in more efficient program planning.

The *Federal Register* on July 10, 1990 (55 FR 28257) is revised to show that the decision for Augur Creek Timber Sale will be subject to appeal under 36 CFR part 217.

FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this revised notice of intent to Sherm A. Radtke, Fremont National Forest headquarters, 524 North G Street, Lakeview, Oregon 97630, phone (503) 947-2151.

Dated: February 27, 1991.

Gerald C. Foster,

Acting Forest Supervisor.

[FR Doc. 91-5510 Filed 3-7-91; 8:45 am]

BILLING CODE 3410-11-M

Amendment to the Forest Five Year Noxious Weed Control Program 1986-1990; Lewis and Clark National Forest, Cascade County, MT

ACTION: Notice of amendment to forest five year noxious weed control program 1986-1990.

SUMMARY: The Lewis and Clark National Forest has approved an amendment to the July 8, 1986 Record of Decision dealing with the Lewis and Clark National Forest Five Year Noxious Weed Control Program 1986-1990. The amendment extends the coverage period through the 1991 field season, or until December 31, 1991. Prior to December 31, 1991, the Lewis and Clark National Forest will prepare a supplement to the Forest's Five Year Noxious Weed Control Program to cover the period 1992-1996.

DATES: Written appeals concerning the extension of this Record of Decision through the 1991 field season, or until December 31, 1991 must be received by April 22, 1991.

FOR FURTHER INFORMATION CONTACT:

John D. Gorman, Forest Supervisor, Lewis and Clark National Forest, PO Box 869, Great Falls, Montana 59403 (406) 791-7700.

Dated: March 4, 1991.

John D. Gorman,

Forest Supervisor, Lewis and Clark National Forest.

[FR Doc. 91-5494 Filed 3-7-91; 8:45 am]

BILLING CODE 3410-11-M

Record of Decision for Final Environmental Impact Statement for Fina Oil and Chemical Company Exploratory Oil/Gas Well; Lewis and Clark National Forest, Glacier County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of availability—record of decision.

SUMMARY: Notice is hereby given that the Forest Service and Bureau of Land Management have issued a Record of

Decision dated February 19, 1991 that approves the Application for Permit to Drill submitted by Fina Oil and Chemical Company on their lease on the Rocky Mountain Ranger District, Lewis and Clark National Forest, Glacier County, Montana. A decision concerning the Chevron Application for Permit to Drill, also addressed in the Final Environmental Impact Statement, will be made separately.

Under the authority of the Federal Onshore Oil and Gas Leasing Reform Act, the Forest Service is responsible for approving the Surface Use Plan of Operations of the Application for Permit to Drill. Therefore, decisions relating to surface uses on National Forest System Lands should be appealed to the Forest Service pursuant to 36 CFR part 217. Two copies of the notice of appeal must be filed with Regional Forester, 200 East Broadway, P.O. Box 7669, Missoula, Montana, 59807, within 45 days from March 2, 1991, the day after a Notice of Decision was published in the Great Falls Tribune.

Decisions made by the Bureau of Land Management related to the approval of the Drilling Plan and the Hydrogen Sulfide Contingency Plan are appealable to the State Director, Montana State Office pursuant to 43 CFR 3165.3. Any adversely affected party may request administrative review before the State Director either with or without oral presentation. Such requests, including all supporting documentation shall be filed in writing within 20 business days of the date this decision is received or considered to be received to the State Director, USDI Bureau of Land Management, P.O. Box 36800, Billings, Montana, 59701-6800.

DATES: Closing date for the appeal period for this Environmental Impact Statement and Record of Decision will be 45 days following the publication of Notice of Decision in the Great Falls Tribune on Friday, March 1, 1991.

ADDRESSES: John D. Gorman, Forest Supervisor, Lewis and Clark National Forest, Post Office Box 869, Great Falls, Montana, 59403.

FOR FURTHER INFORMATION CONTACT: Norman Yogerst, Northern Region Office, Interdisciplinary Team Leader, P.O. Box 7669, Missoula, Montana, 59807. Phone: (406) 329-3634. Copies of the Record of Decision and associated Final Environmental Impact Statement are available upon request from the Lewis and Clark National Forest, P.O. Box 869, Great Falls, Montana, 59403.

SUPPLEMENTARY INFORMATION: The decision allows Fina to build 4.5 miles of

access road on National Forest Land to drill a single exploratory well to determine if geologic structures contain accumulations of oil and/or natural gas. If the well is dry, the access road and well pad will be reclaimed to as near natural conditions as possible. Should the well encounter commercial quantities of oil and/or gas, additional environmental analysis will be conducted to determine if and how production will be allowed to proceed.

The approval of the Surface Use and Operating Plan is conditioned upon Fina accepting and abiding by strict mitigation measures that will minimize the impacts of the project on other surface resources and Forest users.

Dated: March 4, 1991.

John D. Gorman,

Forest Supervisor, Lewis and Clark National Forest.

[FR Doc. 91-5491 Filed 3-7-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.
Title: Industry Classification Questionnaire.

Form Number: Agency-BE-507;
OMB-0608-0032.

Type of Request: Extension of a currently approved collection.

Burden: 500 respondents; 1 response per respondent per year; 250 reporting hours.

Average Hours Per Response: 1/2 hour.

Needs and Uses: The survey is required in order to classify, by industry, information collected on related forms for U.S. direct investment abroad (i.e., forms BE-577, BE-133B, and BE-133C). These data are needed, by country and industry, for compiling the quarterly direct investment estimates included in the U.S. international transactions and gross national product accounts, for annual estimates of the U.S. direct investment position abroad, and for semi-annual estimates of property, plant, and equipment expenditures of majority-owned foreign affiliates. They are also needed to measure the economic significance of U.S. direct investment abroad, monitor changes in such investments, analyze its effect on

the U.S. and foreign economies, and based upon this assessment make informed policy decisions regarding U.S. investment abroad.

Affected Public: Business or other for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, room H5327, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 4, 1991.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 91-5453 Filed 3-7-91; 8:45 am]

BILLING CODE 3510-CW-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with section 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW:

Not later than March 31, 1991, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in February for the following periods:

	Period
<i>Antidumping Duty Proceedings</i>	
AUSTRALIA: Canned Bartlett Pears (A-602-039)	03/01/90-02/28/91
CANADA: Construction Castings (A-122-503)	03/01/90-02/28/91
CANADA: Certain Fresh Cut Flowers (A-122-604)	03/01/90-02/28/91
CHILE: Standard Carnations (A-337-602)	03/01/90-02/28/91
COLOMBIA: Certain Fresh Cut Flowers (A-301-602)	03/01/90-02/28/91
ECUADOR: Certain Fresh Cut Flowers (A-331-602)	03/01/90-02/28/91
FINLAND: Rayon Staple Fiber (A-405-071)	03/01/90-02/28/91
FRANCE: Brass Sheet and Strip (A-427-602)	03/01/90-02/28/91
ISRAEL: Oil Country Tubular Goods (A-508-602)	03/01/90-02/28/91
ITALY: Certain Valves and Connections of Brass, for Use in Fire Protection System (A-475-401)	03/01/90-02/28/91
ITALY: Brass Sheet and Strip (A-475-601)	03/01/90-02/28/91
JAPAN: Ferrite Cores (of the type used in consumer electronic products) (A-588-016)	03/01/90-02/28/91
JAPAN: Stainless Steel Butt-Weld Pipe Fittings (A-588-702)	03/01/90-02/28/91
JAPAN: Television Receivers, Monochrome and Color (A-588-015)	03/01/90-02/28/91
SWEDEN: Brass Sheet & Strip (A-401-601)	03/01/90-02/28/91
TAIWAN: Light-Walled Welded Rectangular Carbon Steel Tubing (A-583-803)	03/01/90-02/28/91
THAILAND: Certain Circular Welded Carbon Steel Pipes & Tubes (A-549-502)	03/01/90-02/28/91
THE PEOPLE'S REPUBLIC OF CHINA: Chloropicrin (A-570-002)	03/01/90-02/28/91
FEDERAL REPUBLIC OF GERMANY: Brass Sheet & Strip (A-428-602)	03/01/90-02/28/91
<i>Suspended Investigations</i>	
BRAZIL: Frozen Concentrated Orange Juice (C-351-005)	01/01/90-12/31/90
THAILAND: Certain Yarn Products (C-549-401)	01/01/90-12/31/90
<i>Countervailing Duty Proceedings</i>	
ARGENTINA: Leather Wearing Apparel (C-357-001)	01/01/90-12/31/90
ARGENTINA: Certain Apparel (C-357-404)	01/01/90-12/31/90
BRAZIL: Certain Castor Oil Products (C-351-029)	01/01/90-12/31/90
BRAZIL: Cotton Yarn (C-351-037)	01/01/90-12/31/90
CANADA: Standard Carnations (C-122-603)	01/01/90-12/31/90
CHILE: Standard Carnations (C-337-601)	01/01/90-12/31/90
FRANCE: Brass Sheet & Strip (C-427-603)	01/02/90-12/31/90
IRAN: In-Shell Pistachios (C-507-501)	01/01/90-12/31/90
ISRAEL: Oil Country Tubular Goods (C-508-601)	01/01/90-12/31/90
MEXICO: Certain Textile Mill Products (C-201-405)	01/01/90-12/31/90
NETHERLANDS: Standard Chrysanthemums (C-421-601)	01/01/90-12/31/90
NEW ZEALAND: Carbon Steel Wire Rod (C-614-504)	10/01/89-09/30/90
PAKISTAN: Cotton Shop Towels (C-535-001)	01/01/90-12/31/90
SOUTH AFRICA: Ferrochrome (C-791-001)	01/01/90-12/31/90
THAILAND: Certain Apparel (C-549-401)	01/01/90-12/31/90
TURKEY: Certain Welded Carbon Steel Pipe & Tube (C-489-502)	01/01/90-12/31/90

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230. Further, in accordance with section 353.31 of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the *Federal Register* a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by March 31, 1991.

If the Department does not receive by March 31, 1991 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: March 1, 1991.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 91-5574 Filed 3-7-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-301-602]

Certain Fresh Cut Flowers From Colombia; Preliminary Results and Termination in Part of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results and termination in part of antidumping duty administrative review.

SUMMARY: In response to requests by the petitioner, three importers, and nineteen respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on certain fresh cut flowers from Colombia. The review covers 38 producers and/or exporters of

this merchandise to the United States and the period March 19, 1987 through February 29, 1988 for miniature carnations and November 3, 1986 through February 29, 1988 for all other merchandise covered by the order. The review indicates the existence of dumping margins for certain firms during the review period. Reviews of 18 producers and/or exporters are being terminated following withdrawal of requests for their review. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: March 8, 1991.

FOR FURTHER INFORMATION CONTACT: Anne D'Alauro or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1988, the Department of Commerce (the Department) published in the *Federal Register* a notice of "Opportunity to Request Administrative Review" (53 FR 7383) of the antidumping duty order on certain fresh cut flowers

from Colombia for the period November 3, 1986 through February 29, 1988. In March of 1988, the petitioner, three importers and nineteen respondents requested an administrative review covering the period November 3, 1986 through February 29, 1988. We initiated the review on April 27, 1988 (53 FR 15083). Requests for review of eighteen producers and/or exporters were subsequently withdrawn. The Department has now conducted the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of certain fresh cut flowers from Colombia (standard carnations, miniature (spray) carnations, standard chrysanthemums and pompon chrysanthemums). Through 1988, such merchandise was classifiable under item numbers 192.1700, 192.2110, 192.2120, and 192.2130 of the Tariff Schedules of the United States Annotated (TSUSA). These products are currently classifiable under item numbers 0603.10.30.00, 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers 38 Colombian producers and/or exporters to the United States of the subject merchandise and the period March 19, 1987 through February 29, 1988 for miniature carnations and November 3, 1986 through February 29, 1988 for the remaining subject merchandise. We are terminating the reviews of Flores Altamira, Flores de Exportacion, Agricola Arenales, Cultivos Buenavista, Flores de Los Andes, Flores Horizonte, Inversiones Penas Blancas, Flores de La Pradera, Inversiones Targa, Cultivos Medellin, Flores La Esmeralda, Floralex, Jardines del Muna, Velez de Monchaus e Hijos, Agromonte, Claveles Colombianos, Sun Flowers, and Fantasia Flowers because these companies withdrew their requests for review on a timely basis and the petitioner did not request reviews of them.

United States Price

Pursuant to section 777A of the Tariff Act, we determined that it was appropriate to average U.S. prices on a monthly basis in order to use actual price information which may often be available only on a monthly basis, to take account of the large volume of sales, and to accommodate the pricing

practices associated with a perishable product.

In calculating United States Price (USP), the Department used purchase price (PP) when sales were made to unrelated purchasers in the United States prior to the date of importation, and exporter's sales price (ESP) when sales were made to unrelated purchasers in the United States after the date of importation, both pursuant to section 772 of the Tariff Act.

We calculated purchase price based on the packed price to the first unrelated purchaser in the United States. The terms of purchase price sales were f.o.b. Bogota and c.i.f. Miami. We made deductions, where appropriate, for foreign inland freight, air freight, brokerage and handling, U.S. customs duties, and return credits.

Exporter's sales price, for sales made on consignment, was calculated based on the packed price to the first unrelated customer in the United States. We made adjustments, where appropriate, for foreign inland freight, brokerage and handling, air freight, box charges, credit expenses, returned merchandise credits, royalties, U.S. duty, and either commissions paid to unrelated U.S. consignees or indirect U.S. selling expenses of related consignees.

Foreign Market Value

Section 773(a)(1)(A) of the Tariff Act requires the Department to compare sales in the United States with viable home market sales of such or similar merchandise sold in the home market in the ordinary course of trade. Only two companies, Flores Generales and Pompones, reported viable home market sales. However, consistent with the final results of administrative review for the March 1, 1988 through February 28, 1989 period (Final Results of Antidumping Duty Review; Certain Fresh Cut Flowers from Colombia (55 FR 20491; May 17, 1990), hereafter Final Results), we have preliminarily concluded that sales of export quality flowers in Colombia are not in the ordinary course of trade for domestic consumption and have, therefore, rejected these sales as the basis for foreign market value.

The cut flower industry in Colombia is primarily an export industry. Domestic sales of most companies consist exclusively of culls (non-export quality) or defective flowers, which are not such or similar merchandise to the export quality flowers under review. As evidence of the fact that the ordinary course of trade in Colombia is sales of culls or defective merchandise, we note that in this review thirty-six of the thirty-eight companies do not report domestic sales of such or similar merchandise

sufficient to satisfy the viability standard described in the Final Results. Because we have determined that sales of such or similar merchandise in the home market are not in the ordinary course of trade, we have rejected the home market sales of export quality flowers reported by Flores Generales and Pompones as a basis for foreign market value. In addition, we note that cost information on carnations submitted by Flores Generales indicates that their home market sales were being made in substantial quantities over an extended period of time at prices significantly below the cost of production, clearly indicating that these sales accounted for production in excess of market demand.

Since we have rejected home market sales as the basis for foreign market value for the reasons stated above, pursuant to section 773(a) of the Tariff Act, we must compute foreign market value either by use of third country prices or by use of constructed value. The Department is rejecting third country sales as an appropriate basis for foreign market value in favor of constructed value because third country prices have been determined to be an inappropriate basis for comparison, for the reasons set forth in the Final Results.

Accordingly, in calculating foreign market value, the Department used constructed value as defined in section 773(e) of the Tariff Act for all companies. The constructed value represents the average per-flower cost for each type of flower, based on the costs incurred to produce that type of flower over the review period.

The Department used the materials, fabrication, and general expenses reported by respondents. The per-unit average constructed value was based on the quantity of export quality flowers actually sold by the grower/exporter in all markets. The non-export quality flowers (culls) which are produced in conjunction with export quality flowers are considered by-products. Therefore, revenue from the sales of culls was used as an offset against the cost of producing the export quality flowers.

Actual general expenses were used since, in all cases, they exceeded the statutory minimum of 10 percent of the cost of materials and fabrication. When both imputed credit and actual credit expenses were included in constructed value, the actual interest expense was reduced to prevent double counting.

When respondents indicated that the actual profit for merchandise of the same general class or kind could not be calculated or was less than eight percent of the sum of the cost of production and

general expenses, the Department used the eight percent statutory minimum for profit. We added U.S. packing to constructed values. Adjustments to constructed value were made for credit and indirect selling expenses.

Adjustments to the respondents' data were made when certain costs necessary for the production of the flowers under review were not included or were not quantified or valued appropriately. Such adjustments included the elimination of exchange rate gains as an offset to respondents' financing expenses, the inclusion of U.S. distress sales in the total volume of flowers sold (as well as in the U.S. sales tables for the calculation of U.S. price), the elimination of U.S. distress sales value as an offset to the costs of cultivation, and an adjustment necessary to reflect actual sales quantity of export quality flowers during the review period.

Preliminary Results of the Review

As a result of our comparison of United States price with foreign market value, we preliminarily determine the margins to be:

Producer/Exporter	Margin (Percent)
Agricola el Redil	3.76
Agrodex Group	0.61
Agrodex	
Flores de Los Amigos	
Flores de Los Arrayanes	
Flores Colon	
La Comuna	
Flores de La Conejera	
Flores Dos Hectareas	
Florinda	
Flores El Gallinero	
Los Gaques	
Inverflores	
Flores Juanambu	
Inverpalmas	
Flores El Lobo	
Flores La Maria	
Flores de Las Mercedes	
Potrero	
Flores El Puente	
Inversiones Santa Rosa	
Tibati	
El Trentino	
El Zorro	
Agrosuba Group	1.29
Agrosuba	
Flores Colombianos	
Jardine de Los Andes	
Exportaciones Bochica/Floral Ltd.	0.38
Floramérica Group	0
Floramérica	
Jardines de Colombia	
Cultivos del Caribe	
Flores Las Palmas	
Flores de Serrezuela	0.16
Flores del Cauca	1.83
Flores del Rio	0
Flores Generales	17.03
Flores La Pampa	33.89
Las Amalias/Pompones	1.85

* No shipments during the period of review. Rate noted is the company's rate from the fair value investigation.

Parties to the proceeding may request disclosure within 5 days and interested parties may request a hearing not later than 10 days after publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than 7 days after the time limit for filing case briefs. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 353.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 353.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisal instructions on each exporter directly to the Customs Service.

As provided for by section 751(a)(1) of the Tariff Act, for future entries of subject merchandise by all firms in this review except for Agrícola el Redil, as well as for any future shipments of this merchandise by the remaining producers and/or exporters not covered in this review, the cash deposit will continue to be at the rates applicable to each of these firms as published in the final results of review for the March 1, 1988 through February 29, 1989 period (55 FR 20491). For Agrícola el Redil, the only firm in this review that was not covered in the subsequent review, the cash deposit of estimated antidumping duties shall be based on their margin established in this review, or 3.76 percent. These deposit requirements will be effective for all shipments of Colombian fresh cut flowers entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1)

of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: February 28, 1991.

Eric I. Garfinkel,
Assistant Secretary for Import
Administration.

[FR Doc. 91-5573 Filed 3-7-91; 8:45 am]

BILLING CODE 3510-DS-M

Auto Parts Advisory Committee; Closed Meeting

AGENCY: International Trade
Administration, Commerce.

ACTION: Notice of Closed Meeting of
Auto Parts Advisory Committee.

SUMMARY: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Auto Parts Act of 1988. The Committee: (1) Reports annually to the Secretary of Commerce on barriers to sales of U.S.-made auto parts and accessories in Japanese markets; (2) assists the Secretary in reporting to the Congress on the progress of sales of U.S.-made auto parts in Japanese markets, including the formation of long-term supplier relationships; (3) reviews and considers data collected on sales of U.S.-made auto parts to Japanese markets; (4) advises the Secretary during consultations with the Government of Japan on these issues; and (5) assists in establishing priorities for the Department's initiatives to increase U.S.-made auto parts sales to Japanese markets, and otherwise provide assistance and direction to the Secretary in carrying out these initiatives. At the meeting, committee members will receive briefings on the status of ongoing consultations with the Government of Japan and will discuss specific trade and sales expansion programs related to U.S.-Japan automotive parts policy.

DATES AND LOCATION: The meeting will be held on Wednesday, April 10, 1991 from 7:30 a.m. to 12 noon at the Bismarck Hotel, 171 West Randolph Street, Chicago, Illinois 60601.

FOR FURTHER INFORMATION CONTACT: Mr. Stuart Keitz, Office of Automotive Industry Affairs, Automotive Affairs and Consumer Goods Sector, Trade Development, Main Commerce, room 4036, Washington, DC 20230, telephone: (202) 377-0669.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on June 14,

1989, pursuant to section 10(d) of the Federal Advisory Act, as amended, that the series of meetings or portions of meetings of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the act relating to open meeting and public participation therein because these items will be concerned with matters that are within the purview of 5 U.S.C. 552b (c)(4) and (9)(B). A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the International Trade Administration Records Inspection Facility, room 4104, Main Commerce.

Dated: March 1, 1991.

Henry Misisco,

Director,

[FR Doc. 91-5452 Filed 3-7-91; 8:45 am]

BILLING CODE 3510-DR-M

COMMISSION ON AGRICULTURAL WORKERS

Meeting

AGENCY: Commission on Agricultural Workers.

ACTION: Announcement of meeting.

SUMMARY: This notice announces a meeting of the Commission on Agricultural Workers. The Commission was established by the Immigration Reform and Control Act (IRCA) of 1986 under section 304.

On March 12, Commissioners will hear a report and discussion of foreign worker programs in other countries. On Wednesday, March 13, Commissioners will hear discussion on whether and how foreign workers should be admitted to the United States.

DATES: 1:30 p.m., March 12, 1991 and 2 p.m., March 13, 1991.

ADDRESSES: Conference Room—Embassy B, Dupont Plaza Hotel, 1500 New Hampshire Ave. NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beth Bickley, Telephone: (202) 673-5348.

Dated: March 5, 1991.

Richard R. Peterson,

Acting Executive Director.

[FR Doc. 91-5558 Filed 3-7-91; 8:45 am]

BILLING CODE 6820-62-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

March 4, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: March 4, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 350 and 669-P are being increased by application of swing. Category 669-P is being increased further for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 12254, published on April 2, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 4, 1991.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 27, 1990 by the Chairman,

Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1990 and extends through March 31, 1991.

Effective on March 4, 1991, you are directed to amend the March 27, 1990 directive to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Federative Republic of Brazil:

Category	Adjusted 12-month limit ¹
Sublevels in aggregate:	
350.....	95,830 dozen
669-P ²	1,420,401 kilograms

¹ The limits have not been adjusted to account for any imports exported after March 31, 1990.

² Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-5572 Filed 3-7-91; 8:45 am]

BILLING CODE 5572-00-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: April 8, 1991.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On January 11 and 18, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 1180 and 1987/8) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of

qualified workshops to produce the commodities and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

- The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- The actions will not have a serious economic impact on any contractors for the commodities and services listed.
- The actions will result in authorizing small entities to produce the commodities and provide the services procured by the Government.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Clamp Strap Fastener Assembly
5820-00-937-9844

Pad, Writing Paper
7530-01-124-7832

(Requirements of CSA Region 10)
Duplicate Diazo Microfiche Program
7690-00-NSH-0019

(Requirements for the Department of Health and Human Services, National Institute of Safety and Health, Cincinnati, Ohio only)

Clip, End, Strap
8315-00-753-3933

Services

Grounds Maintenance, McClellan Air Force Base, California
Parts Sorting, Red River Army Depot, Texarkana, Texas

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.

[FR Doc. 91-5569 Filed 3-7-91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 8, 1991.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Kit, Repair

2590-01-114-7396

Skirt, Woman's

8410-01-244-0508

8410-01-224-0509

8410-01-224-0510

8410-01-224-0511

8410-01-224-0512

8410-01-224-0513

8410-01-224-0514

8410-01-224-0515

8410-01-224-0516

8410-01-224-0517

8410-01-224-0518

8410-01-224-0519

8410-01-224-0520

8410-01-224-0521

8410-01-224-0522

8410-01-224-0523

8410-01-224-0524

8410-01-224-0525

8410-01-224-0526

8410-01-224-0527

8410-01-224-0528

8410-01-224-0529

8410-01-224-0530

8410-01-224-0531

8410-01-224-0532

8410-01-224-0533

8410-01-224-0534

8410-01-224-0535

8410-01-224-0536

8410-01-224-0537

8410-01-224-0538

Services

Janitorial/Custodial, Federal Archives and Record Center, Buildings 12 and 22, Military Ocean Terminal, Bayonne, New Jersey

Janitorial/Custodial, Federal Building and USPO, 256 Warner Milne Road, Oregon City, Oregon

Janitorial/Custodial, U.S. Army Reserve Center, Orangeburg, South Carolina

Janitorial/Custodial, Federal Building, 695 South Main Street, Colville, Washington

Operation of Postal Service Center, Keesler Air Force Base, Mississippi

Operation of Base Information Transfer Center, Keesler Air Force Base, Mississippi

Beverly L. Milkman,
Executive Director.

[FR Doc. 91-5570 Filed 3-7-91; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors; Meeting

AGENCY: Defense Systems Management College.

ACTION: Board of Visitors meeting.

SUMMARY: A meeting of the Defense Systems Management College (DSMC) Board of Visitors will be held in Building 184, Fort Belvoir, Virginia, on Tuesday, March 12, 1991, from 0830 until 1600. The agenda will include a review of accomplishments related to the system acquisition education, system acquisition research, and information collection and dissemination missions. It will also include a review of the DSMC plans, resources and operations. The meeting is open to the public; however, because of limitations on the space available, allocation of seating will be made on a first-come, first-serve basis. Persons desiring to attend the meeting should call Mrs. Joyce Reniere on (703) 664-4235.

March 4, 1991.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-5530 Filed 3-7-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission**

[Docket No. RM87-17-000]

**Natural Gas Data Collection System;
Revised Print Software and Revisions
to the Record Formats for the FERC
Form No. 2-A**

Issued: March 1, 1991.

AGENCY: Federal Energy Regulatory
Commission.**ACTION:** Notice of Availability of
Revised Print Software and revisions to
the record formats for the FERC Form
No. 2-A.

SUMMARY: Both PC and mainframe versions of the revised software are not available for printing the structured data file of the FERC Form No. 2-A (Annual Report of Nonmajor Natural Gas Companies). This software has been developed for Commission use and to assist pipelines in complying with the electronic submission requirement for filing the FERC Form No. 2-A in accordance with Order Nos. 493 (53 Fed. Reg. 15,025 (Apr. 27, 1988)), 493-A (53 Fed. Reg. 30,027 (Aug. 10, 1988)), and 493-B (53 Fed. Reg. 49,652 (Dec. 9, 1988)). A User/Operations Manual and a complete set of revised record formats is available on diskette and/or in hardcopy. Separate order forms are attached for requesting either the mainframe version (source code) or the PC version (executable code) of the software.

DATES: The software, User/Operations Manual, and the revised record formats are available on March 1, 1991.

ADDRESSES: Requests for the software and the documentation should be directed to:

Reference and Information Center,
Federal Energy Regulatory
Commission, 941 North Capitol Street
NE., room 3308, Washington, DC
20426; (202) 208-1371.

FOR FURTHER INFORMATION CONTACT:
Linda Ferguson at (202) 208-0706.

SUPPLEMENTARY INFORMATION: PC software (executable code) is not available to provide for printing the structured data file of the FERC Form No. 2-A when filed in accordance with the Form No. 2-A instructions and record formats previously revised on January 8, 1990 and updated today. Revisions to the record formats are listed in Appendix A. A complete directory of files found on each diskette is listed in Appendix B. The User's Manual is available in hardcopy and on diskette in WordPerfect 5.0 or ASCII

format. Also a complete set of updated record formats is available in hardcopy and on diskette in WordPerfect 4.2 or ASCII format.

The print software was written in the COBOL programming language. The software can be run on an IBM-compatible PC with DOS 3.0 (or later version) and at least 640K of RAM. The software is available on a 3.5" (1.44MB) or a 5.25" (1.2MB) double-sided, high density diskette.

The software has been tested by staff. However, if problems occur relating to the software, the Commission staff encourages users to submit written comments as to the exact nature of the problem to Linda Ferguson, room 6000, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

The mainframe source code for printing a hardcopy of the FERC Form No. 2-A is available on 9-track magnetic tape (1600 BPI or 6250 BPI) or 18-track cartridge (6250 BPI). There is no charge for the source code, however, all requests must be accompanied by a 9-track magnetic tape or 18-track cartridge with an external label affixed containing company name, mailing address, telephone number and a contact person FERC will initialize the requestor's tape or cartridge, and copy the source code for hard copy printing to the tape/cartridge. Please specify either IBM or ANSI Standard labels. Persons requesting the mainframe source code should fill out the attached Order Form for the FERC Form No. 2-A Hardcopy Print Source Code.

This notice is available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem. Your communications software should be set a full duplex, no parity, eight data bits and one stop bit. To access CIPS at 300, 1200 or 2400 baud dial (202) 208-1397. For access at 9600 baud, dial (202) 208-1781. FERC is using U.S. Robotics HST Dual Standard modems. If you have any problems in obtaining a copy of this notice through CIPS, please call (202) 208-2474. This notice will be available on CIPS for 30 days from the date of issuance.

In addition to publishing the text of this notice in the *Federal Register*, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in the Reference and Information Center (room 3308) at

the Commission's headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The PC software is available from the Commission's copy contractor, LaDorn Systems Corporation ((202) 898-1151), located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426. Persons requesting the software should fill out the attached Order Form. The software is available without charge. However, the Commission's copy contractor has a copy fee of \$6.00 per 3.5" diskette and \$5.00 per 5.25" diskette. The User's Manual and the record formats are also available in hardcopy at 20 cents per page.

Lois D. Cashell,
Secretary.

Appendix A

Revisions to the FERC Form No. 2-A Record
Formats and General Information

Schedule F8

1. Record 36: Statement of Income for the Year—Part 1 Substitute Schedule/Record.
 - a. Item "Utility Plant Reported" at character position 12: the Comments have been changed so that Other Utility, Code 3, is now identified in item 401b.
 - b. New Item 401a, "Net Utility Operating Income" character positions 217-228, the data type is numeric, and the Comments read "item 385 minus item 401".
 - c. Item 401b, "Other Item Specified" was previously Item 401a, the new character positions are 229-251.
 - d. Item "Footnote ID": new character positions 252-255.
2. Record 37: Statement of Income for the Year—Part 2 Substitute Schedule/Record.
 - a. Item "Utility Plant Reported", character position 12, is deleted. Note! This is replaced by the Item "Filler".
 - b. New Item "Filler", character position 12, data type is character, and the Comments read "blank filled".
 - c. Item 404, "Net Utility Operating Income", character positions 13-24: the Comments have been changed to read "item 385 minus item 401 (where Utility Plant Reported code = "4")"
3. Record 38: Statement of Income for the Year—Part 3 Substitute Schedule/Record.
 - a. Item "Utility Plant Reported", character position 12, is deleted. Note! This is replaced by the Item "Filler".
 - b. New Item "Filler", character position 12, data type is character, and the Comments read "blank filled".
4. Record 39: Statement of Income for the Year—Part 4 Substitute Schedule/Record.
 - a. Item "Utility Plant Reported", character positions 12, is deleted. Note! This is replaced by the Item "Filler".
 - b. New Item "Filler", character position 12, data type is character, and the Comments read "blank filled".

5. Record 78: Sales for Resale-Natural Gas (Account 483)—Part 2 Substitute Schedule/Record.
- Item 942, "Other Item Specified": the character positions are changed to 55-99.
 - Item "Footnote ID": the character positions are changed to 100-103.
 - Item "Filler": the character positions are changed to 104-255.

General Information

- The following has been added to the cover page:

This report is mandatory under the Natural Gas Act, Sections 10(a) and 16, and 18 CFR 260.2. Failure to report may result in criminal fines, civil penalties and other sanctions as provided by law. The Federal Energy

Regulatory Commission does not consider this report to be of a confidential nature.

- The paragraph following III (b)(ii) has been modified to read as follows:

When submitting after the filing date for this form, send the letter or report to: Chief Accountant, Federal Energy Regulatory Commission, 825 N. Capitol St. NE, room 946, Washington, DC 20426.

Appendix B

Directory of Files for Each Diskette

Package A—Diskette #1:

FM2A0	EXE	78752	Form 2-A Print Software.
FM2A1	EXE	126560	do
FM2A2	EXE	134208	do
FM2F4B	EXE	137072	do
FM2F5B	EXE	88400	do
FM2F5D	EXE	54288	do
FM2F6A	EXE	61936	do
FM2F6C	EXE	83680	do
FM2F6E	EXE	129616	do
FM2F6G	EXE	56688	do
FM2F7D	EXE	66192	do

Diskette #2:

F2ASUBDR	EXE	41744	Form 2-A Print Software.
FORM2	BAT	1680	do
FORMTWO	EXE	208336	do
FUG	ASC		User/Operations Manual in ASCII.
FUG	2		User/Operations Manual in WordPerfect.
5.1			

Package B—Diskette #1:

FUG	2	User/Operations Manual in WordPerfect 5.1.
FUG	ASC	User/Operations Manual in ASCII.
Form2A	W51	Record Formats in WordPerfect 4.2.
Form2A	ASC	Record Formats in ASCII.
Notice	W51	Notice in WordPerfect 5.1.
Notice	ASC	Notice in ASCII.

Order Form

RM 87-17-000: Released—March 1, 1991
FERC FORM 2-A: PC Print Software, User's Manual Revised Record Formats

Send to: LaDorn Systems Corporation, 941
North Capitol Street, NE.—Room 3308,
Washington, DC 20426, (202) 898-1151

Ordered By: _____
Company: _____
Address: _____

Phone Number: (_____) _____

Diskette:
_____ 3.5" (1.44MB): \$6.00/diskette
(specify)
_____ 5.25" (1.2MB): \$5.00/diskette

Package	Description	Copy Fee
Package A.....	Form No. 2-A Executable PC Print Code plus the User/Operations Manual in ASCII. 2 diskettes.....	
Package B.....	Form No. 2-A User/Operations Manual (WordPerfect 5.1 & ASCII), Record Formats (WordPerfect 4.2 & ASCII) and the Notice (Wordperfect 5.1 & ASCII) 1 diskette.....	
Package C.....	Hardcopy of Record Formats 193 pages @ 20 cents per page.....	
Package D.....	Hardcopy of User/Operations Manual 32 pages @ 20 cents per page.....	
	Postage & handling (Contact LaDorn).....	
	Total copy fee.....	

Make check payable to LaDorn Systems Corporation.

Order Form for the FERC Form No. 2-A
Hardcopy Print Source Code

USE THIS FORM TO ORDER COPIES OF
THE MAINFRAME VERSION OF THE HARD
COPY PRINT SOFTWARE. (issued March 1,
1991)

Mail to: Linda Ferguson, Room 6000, Federal
Energy Regulatory Commission, 825
North Capitol Street, N.E., Washington,
D.C. 20426, (202) 208-0706

Company Official _____
Company Name _____

Phone Number _____

All requests must be accompanied by a 9-track magnetic tape or 18-track cartridge with an external label affixed containing company name, address, telephone number and a contact person. Check off the appropriate items as follows:

9-track tape: _____ 1600 BPI or _____ 6250
BPI 18-track tape: _____

ANSI or IBM Standard Labels

[FR Doc. 91-5467 Filed 3-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-98-000]

CNG Transmission Corp. Proposed Changes in FERC Gas Tariff

March 1, 1991.

Take notice that on February 27, 1991, CNG Transmission Corporation (CNG) filed the following original, revised, and substitute tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

Second Revised Sheet No. 40
Original Sheet No. 40A
Substitute First Revised Sheet No. 41
First Revised Sheet No. 41
Third Revised Sheet No. 44
Substitute First Revised Sheet No. 45
Substitute Second Revised Sheet No. 46
Second Revised Sheet No. 47
Third Revised Sheet No. 48
Third Revised Sheet No. 49
First Revised Sheet No. 50
Second Revised Sheet No. 51
Substitute Second Revised Sheet No. 52
Original Sheet No. 52A
Second Revised Sheet No. 53
First Revised Sheet No. 97
First Revised Sheet No. 98
First Revised Sheet No. 202
Substitute First Revised Sheet No. 203
First Revised Sheet No. 204
Second Revised Sheet No. 205
Substitute First Revised Sheet No. 206
Substitute First Revised Sheet No. 207
Substitute First Revised Sheet No. 208
Substitute Second Revised Sheet No. 209
Substitute Third Revised Sheet No. 210
Substitute Second Revised Sheet No. 211
Substitute Second Revised Sheet No. 212
Substitute Original Revised Sheet No. 212A
Original Sheet No. 212B
Original Sheet No. 212C
Original Sheet No. 212D
Original Sheet No. 212E
Original Sheet No. 212F
Original Sheet No. 212G
First Revised Sheet No. 213

CNG states that the proposed effective date is March 29, 1991.

CNG states that the primary purpose of the filing is to flow through changes in take-or-pay costs allocated to CNG by its pipeline suppliers.

CNG states that copies of this filing were served upon CNG's customers as well as interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and

Regulations. All such motions or protests should be filed on or before March 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5469 Filed 3-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP87-30-000 and RP90-69-000]

Colorado Interstate Gas Co.; Informal Settlement Conference

March 1, 1991.

Take notice that an informal settlement conference has been scheduled in the above-captioned proceeding to begin on March 21, 1991, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Donald Williams (202) 208-0743 or John P. Roddy at (202) 208-1176.

Lois D. Cashell,

Secretary.

[FR Doc. 91-5470 Filed 3-7-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-99-000]

Northern Border Pipeline Co.; Proposed Changes in F.E.R.C. Gas Tariff

March 1, 1991.

Take notice that on February 27, 1991, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's F.E.R.C. Gas Tariff, Original Volume No. 1, the following revised tariff sheets:

Fifth Revised Sheet Number 100
Fifth Revised Sheet Number 156
Ninth Revised Sheet Number 158
Second Revised Sheet Number 160
Original Sheet Number 160A
Second Revised Sheet Number 200
First Revised Sheet Number 201

Second Revised Sheet Number 202
Second Revised Sheet Number 203
Second Revised Sheet Number 204
Second Revised Sheet Number 205
Second Revised Sheet Number 206
First Revised Sheet Number 207
Second Revised Sheet Number 208
Second Revised Sheet Number 209
Third Revised Sheet Number 210
First Revised Sheet Number 244
Original Sheet Number 244A

Northern Border states that the primary purpose of this filing is to establish backhaul transportation service for both firm and interruptible shippers on Northern Border's system. In addition, it states that a minimum charge has been established for interruptible customers and the General Terms and Conditions Section has been alphabetized incorporating terms that had previously been added, for administrative ease, to the end of that Section. Associated housekeeping changes were also made.

Northern Border states that because it is proposing to offer a new service, a 14-day open window period for anyone interested in subscribing to it will be established seven days after the Commission approves this filing.

Northern Border states that none of the changes made in this tariff filing produce any change in Northern Border's total revenue requirement due to its cost of service form of tariff.

Northern Border has requested that these revised tariff sheets be effective April 1, 1991. Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with 18 CFR 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before March 8, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

FR Doc. 91-5471 Filed 3-7-91; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research**Experimental Program to Stimulate Competitive Research (EPSCoR), 91-6**

AGENCY: Department of Energy, Energy Research Office.

ACTION: Notice.

SUMMARY: The Office of Energy Research (ER) of the Department of Energy (DOE) is today amending the notice inviting grant applications, 91-6, published in the *Federal Register* at 56 FR 2518, January 23, 1991. Provisions of that earlier *Federal Register* notice which are not amended by this notice remain in effect. The amendments are being offered to clarify areas of the application and review process as well as provide information on the Experimental Program to Stimulate Competitive Research (EPSCoR) objectives and future funding opportunities.

DATES: Applications for grants under this amendment should be received the same as originally determined under Notice 91-6 which is no later than 4:30 p.m. eastern local time March 20, 1991.

ADDRESSES: Due to heightened security concerns, hand delivered applications will not be accepted. At this time, the only acceptable means of delivery will be the U.S. Mail (U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, Washington, DC 20585) or Federal Express (U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, 19901 Germantown Road, Germantown, MD 20874).

FOR FURTHER TECHNICAL INFORMATION: Ms. Donna J. Prokop, Education Programs Manager, Office of University and Science Education Programs, Office of Energy Research, ER-82, Department of Energy, Washington, DC 20585, (202) 586-8949.

SUPPLEMENTARY INFORMATION: Because it is DOE's intent to increase the number of graduate students in energy-related research and because the terminal degree program in some important energy-related research areas is at the master's degree level, DOE has adjusted the eligibility of its DOE/EPSCoR traineeship program to allow institutions within the eligible EPSCoR states with active energy-related masters degree programs to qualify. Therefore applications for the DOE/EPSCoR traineeship awards should discuss the following matters:

(1) Masters and/or doctoral-level training and research experience through active participation in

established, ongoing programs of energy research program(s) on which the traineeship request is based;

(2) The number of degrees awarded to graduate students associated with the identified energy research area(s);

(3) A summary of accomplishments;

(4) The record of masters and/or doctoral degree productivity of participating departments over the past five years, by year;

(5) The qualifications of key faculty committed to the traineeship program as measured by such elements as publications, number and type of masters and/or doctoral research projects, and number of masters and/or doctoral dissertations supervised over the last five years; and

(6) Support for energy research projects from on-campus sources.

The DOE/EPSCoR planning grant applications will be available to the traineeship review panels to help the panelists ascertain the relationship of the traineeship applications to the state planning committee's preliminary plans to develop the state's research infrastructure and human resources. The project period for the planning grant award will be for a duration of approximately one year, beginning on or about September, 1991. There are no funds requested in FY 1992 for the DOE/EPSCoR.

In addition, the DOE/EPSCoR traineeship funds may not be used for equipment and DOE expects that the traineeships will be cost-shared from other non-Federal sources.

Issued in Washington, DC on February 28, 1991.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 91-5578 Filed 3-7-91; 8:45 am]

BILLING CODE 6450-01-M

Special Research Grant Program Notice 91-9; Atmospheric Radiation Measurement Program

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Department of Energy (DOE) hereby announces its interest in receiving applications for Special Research Grants to support the experimental and theoretical study of radiation and clouds in conjunction with the Atmospheric Radiation Measurement (ARM) program. The first ARM research site is projected to be operational in calendar year 1992 and may be located at a

midcontinental location in the United States. The final determination of the site and of the initial complement of instruments will be made in 1991 by the DOE. This notice requests applications for grants to support: (1) The modeling and analysis of data relating to the parameterization of clouds in General Circulation Models (GCMs) and related models. The parameterizations must include the full life cycle of the cloud type being modeled. This includes process level models of clouds which can lead to improved GCMs (2) The development of advanced instrumentation for high-accuracy/precision radiometric observations.

DATES: Formal applications submitted under this notice should be received by May 15, 1991.

ADDRESSES: Formal applications should be forwarded to: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER-64/GTN, Mail Stop G-236, Washington, DC 20585, ATTN: Program Notice 91-9. The Federal Express delivery address is: U.S. Department of Energy, Division of Acquisition and Assistance Management, ER-64/GTN, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER TECHNICAL INFORMATION: Contact Mr. Peter W. Lunn, Atmospheric and Climate Research Division, Office of Health and Environmental Research, ER-76, Washington, DC 20585, (301) 353-4819 or FTS 233-4819.

SUPPLEMENTARY INFORMATION: One of the major scientific objectives of the Atmospheric and Climate Research Division is to improve the performance of predictive models of the Earth's climate and to thereby make predictions of the response of the climate system to increasing concentrations of greenhouse gases. The purpose of the ARM program is to improve the modeling of radiation and clouds in computer programs used to predict future climate, particularly the GCMs. This program is one element of a major effort to improve the quality of current models and to support the development of sets of climate models capable of making regional prediction of climate and climate change. The major component of the ARM program is an experimental testbed for the study of models of the terrestrial radiation field, properties of clouds, the full life cycle of clouds, and the incorporation of these process level models into climate models. This testbed is referred to as the Clouds and Radiation Testbed (CART).

This notice requests applications for grants to support: (1) The modeling and analysis of data relating to the

parameterization of the cloud formation process in General Circulation Models (GCMs), including process level models that can lead to improved models of the Earth's climate, and (2) the development of advanced instrumentation for high-precision radiometric observations, related to the goals of the ARM program.

Successful applicants for grants in support of (1) above will participate in the modeling and scientific portion of the ARM program. These applicants must demonstrate the role of their research in the improvement of General Circulation and related models and delineate the path that their results will take to make those improvements. It is anticipated that the successful applicant will be involved in one or more of three activities: (a) The development of cloud life cycle models and parameterization or the testing of these models in GCMs or process level models; (b) experimental studies at CART facilities to test elements of models and their performance or to obtain key laboratory data; and (c) the analysis of existing data, including field data and satellite data, to support model development or testing. These efforts should have as a focus the conduct of research using the CART facilities being developed for ARM. The successful applicant will participate in the continuing development of the detailed experimental approaches for CART and guide the evolving development and acquisition of the experimental equipment.

Successful applicants for participation in the ARM advanced instrument development program, (2) above, will develop instruments to meet the long-term needs of the ARM Program for the development and deployment of improved radiometric sensors, both broad-band and spectrally resolved. Of particular interest are instruments capable of high-precision radiometric calibration. The application should contain in appropriate detail a discussion of the accuracy and precision of the proposed measurement methodology as a function of wavelength and the relevance of the resulting measurements to testing models of atmospheric radiative processes.

To ensure that the program meets the broadest needs of the research community and the specific needs of the DOE Atmospheric and Climate Research Division (ACRD), successful applicants will participate as Science Team members along with selected scientists from other ACRD programs that relate to the ARM program. Costs for participation in Science Team meetings

and subcommittee meetings should be included in the respondent's application. Estimates should be based on two (2) trips of one week to Washington, DC, and two (2) trips of three (3) days to Chicago, IL.

It is anticipated that, subject to the availability of appropriated funds, between \$1M and \$2M will be available for awards for the combined activity under both categories in FY 1992. Multiple year funding of awards is expected, subject to the availability of appropriated funds. The allocation of funds between (1) and (2) above will depend on the number and quality of the applications received. Typical ACRD awards are \$200K per year but range from \$50K to \$750K.

The technical portion of the application should not exceed twenty-five (25) double-spaced pages. Lengthy application appendices are not encouraged.

Information about development and submission of applications, eligibility, limitations, evaluation, and selection processes, and other policies and procedures may be found in 10 CFR part 605. Application kits and copies of 10 CFR part 605 are available from the same offices listed under the "ADDRESSES" section of this Notice. Instructions for preparation of an application are included in the application kit. Telephone requests may be made by calling (301) 353-3281 or FTS 233-3281. The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued in Washington, DC On February 27, 1991.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 91-5579 Filed 3-7-91; 8:45 am]

BILLING CODE 6450-01-M

Southeastern Power Administration

Proposed Rate, Public Forum, and Opportunities for Public Review and Comment

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice of proposed rate for energy from pumping for Georgia-Alabama-South Carolina System, notice of public forum and opportunity for review and comment.

SUMMARY: Southeastern proposes a new Wholesale Power Rate Schedule GAMF-3-A. The new rate schedule will be applicable to Southeastern energy derived from pumping at the Carters Project and sold to preference customers

in Georgia, Alabama, Mississippi, and Florida.

Opportunities will be available for interested persons to review the proposed rates, to participate in a forum and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before April 24, 1991. A public information and comment forum will be held in Atlanta, Georgia, on April 9, 1991. Persons desiring to speak at the forum should notify Southeastern at least 7 days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits. If Southeastern has not been notified by close of business on March 29, 1991, that at least one person intends to be present at the forum, the forum will be automatically canceled with no further notice.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635. The public information and comment forum will begin at 10 a.m. on April 9, 1991, at the Holiday Inn Airport North, 1380 Virginia Avenue, Atlanta, Georgia, 30320.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Jr., Director, Power Marketing Division, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635, (404) 283-9911.

Discussion

Proposed rate schedule GAMF-3-A is designed to recover the cost of energy derived from pumping at the Carters Project. Presently pumping operations at the Carters Project are managed by Southern Company Services. The Southern Companies provide the pumping energy and receive the energy generated from the pumped water. For this service, the Southern Companies have paid an annual fee. This arrangement expires May 31, 1991. Energy from pumping is necessary to support the capacity of the Georgia-Alabama-South Carolina System. Southeastern proposes to purchase energy on the open market to support pumping operations of the Carters Project. A conversion factor of 70 percent is applied to the net quantity of pumping energy provided to determine the net quantity of energy that can be generated from pumped water. Southeastern proposes to make this energy available to the preference

customers at cost, which is the cost of the energy purchased for pumping divided by 70 percent. The proposed Wholesale Power Rate Schedule GAMF-3-A will recover the associated costs relative to the Carters Pumping Arrangement. This proposed rate would be effective for the period beginning June 1, 1991, and ending September 30, 1993.

Issued at Elberton, Georgia, February 25, 1991.

John A. McAllister, Jr.

Administrator.

[FR Doc. 91-5580 Filed 3-7-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3912-5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 18, 1991 Through February 22, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 3, 1990 (55 FR 13969).

Draft EISs

ERP No. D-AFS-K61117-CA Rating EC2, Camp Little Green Valley Renovation, Expansion and Operation Plan Approval, San Bernardino National Forest, San Bernardino County, CA.

Summary

EPA expressed environmental concerns with the project's potential impacts to water quality, wetlands and riparian meadows and requested that the final EIS consider alternatives combining components from different alternatives. EPA also expressed concerns that of renovation work at the camp has already begun, which is not consistent with the spirit nor intent of the National Environmental Policy Act.

ERP No. D-COE-K35032-CA Rating EO2, Sunrise Douglas Residential Development Project, General Plan Amendment and Rezoning, Approval, section 404 Permit, Sacramento County, CO.

Summary

EPA recommended that the Army Corps deny the section 404 permit for the project as proposed, as it does not comply with the 404(b)(1) Guidelines. The project appears inconsistent with timely attainment of National Ambient Air Quality Standards. Induced growth will exacerbate cumulative impacts to wetlands, air quality, natural resources and public services such as drinking water supplies and sewage treatment capacity.

ERP No. D-IBR-K31015-CA Rating EC2, Sante Rosa Subregional Long-term Wastewater Treatment and Disposal Systems, Construction, Funding and section 404 Permit, Sonoma County, CA.

Summary

EPA requested that the final EIS contain additional discussion on the disposal of wastewater sludge, the potential impacts of effluent discharges on wetlands and estuarine ecosystems, the project's compliance with section 404 of the Clean Water Act and cumulative or indirect impacts.

ERP No. D-NPS-K61114-CA Rating EC2, Santa Monica Mountains National Recreation Area, Cheeseboro Canyon and Palo Comado Canyon Land Exchange, Ventura and Los Angeles Counties, CA.

Summary

EPA expressed environmental concerns with potential indirect and cumulative impacts on air quality, water quality, wildlife and the conversion of rural land to residential developments. EPA stated that the proposed action, which would enable the development of a planned community, may have significant indirect impacts on regional air and water quality and other natural resources.

Final EISs

ERP No. F-NPS-K61098-CA, Eugene O'Neill National Historic Site Development and General Management Plan, Implementation, Contra Costa County, CA.

Summary

Review of the final EIS was not deemed necessary. No formal letter was sent to the agency.

ERP No. F-REA-E08017-FL, Hardee Power Station and Related Facilities, 230kV Transmission Line and Natural Gas Pipeline, Construction and Operation, Loan Guarantee, NPDES Permit, Hardee, Polk, DeSoto, Lee and Charlotte Counties, FL.

Summary

EPA continues to have concerns regarding the potential impacts of the transmission line and pipeline corridor access roads to wetlands.

Dated: March 5, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-5576 Filed 3-7-91; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3912-4]

Environmental Impact Statements; Availability

RESPONSIBLE AGENCY:

Office of federal activities, general information (202) 382-5073 or (202) 382-5075. Availability of environmental impact statements filed February 25, 1991 through March 1, 1991 pursuant to 40 CFR 1506.9.

EIS No. 910060, DRAFT EIS, AFS, MT, East Fortine Timber Sales and Road Construction, Implementation, Kootenai National Forest, Fortine Ranger District, Lincoln County, MT, Due: April 22, 1991, Contact: Thomas Pichlerz (406) 882-4451.

EIS No. 910061, FINAL EIS, FHW, MN, Shepard/Warner Road/East CBD Bypass Study Corridor Improvements, Randolph Avenue to I-35E, Funding and COE Permit, City of St. Paul, Ramsey County, MN, Due: April 8, 1991, Contact: Stan Graczyk (612) 290-3233.

EIS No. 910062, FINAL EIS, BLM, MT, Sleeping Giant and Sheep Creek Wilderness Study Areas (WSAs) Recommendations, Wilderness or Nonwilderness Designation, Lewis and Clark County, MT, Due: April 8, 1991, Contact: Brad Rixford (406) 494-5059.

EIS No. 910063, FINAL EIS, FHW, TX, I-30/I-35W Interchange Improvements, Forest Park Boulevard to Riverside Drive and Hattie Street to Luella Street, Funding, Tarrant County, TX, Due: April 8, 1991, Contact: W. L. Hall, Jr. (512) 463-8585.

EIS No. 910064, THIRD FINAL SUPPLEMENT, FHW, MA, Central Artery/I-93 Third Harbor Tunnel/I-90 Extension, Design Modifications, Updated and Additional Information, Funding, U.S. COE section 10 and 404 Permits, U.S. CGD Permits and EPA NPDES Permit, Suffolk County, MA, Due: April 8, 1991, Contact: Alexander Almeida (617) 494-2319.

EIS No. 910065, DRAFT EIS, AFS, CA, Primrose Buy Out Timber Sale, Implementation, Tahoe National Forest, Downie Ranger District, Sierra County,

CA, Due: April 22, 1991, Contact: Alan Doerr (916) 288-3231.

EIS No. 910066, DRAFT EIS, UAF, IL, Chanute Air Force Base (AFS) Disposal and Reuse, Implementation, Champaign County, IL, Due: April 22, 1991, Contact: Lt. Col. Tom Bartol (714) 382-4891.

Amended Notices

EIS No. 910009, DRAFT EIS, AFS, MT, Upper Ruby Cattle and Horse Allotment Management Plan, Centennial Divide Road No. 100 Reconstruction and Management Area Designation for portions of the Ruby River, Implementation, Beaverhead National Forest, Sheridan Ranger District, Madison and Beaverhead Counties, MT, Due: April 15, 1991, Contact: Ronald Stellingwerf (406) 683-3900. Published FR 1-18-91—Review period extended.

EIS No. 910041, FINAL EIS, USA, MS, Camp Shelby Annual Training Facilities, Construction, Implementation, Forrest, Perry, and Greene Counties, MS, Due: April 1, 1991, Contact: Col. Everett Cameron (601) 973-6229.

Published FR 2-15-91—Review period reestablished.

Dated: March 5, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91-5575 Filed 3-7-91; 8:45 am]

BILLING CODE 6560-51-M

[OPTS-400055; FRL-3880-2]

Toxic Release Inventory Data Capabilities Program; Financial Assistance Program Eligible for Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and review.

SUMMARY: The EPA's Office of Toxic Substances is announcing the availability of \$800,000 in funds for grants and cooperative agreements under the Toxic Release Inventory (TRI) Data Capabilities Program (this name has been changed from the "TRI Data Quality Assurance Program"). Funds under this program may be used to establish programs of TRI data management, analysis, use, and quality assurance which will assist the State in preventing or eliminating toxic chemical risks. Eligible applicants are the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and federally-recognized Indian tribes. ("States" is used in this announcement

to refer to all eligible applicants.)

Awards to all recipients except Indian tribes will be made under authority of section 28 of the Toxic Substances Control Act (TSCA). Awards to federally-recognized Indian tribes will be made under section 10 of TSCA. All recipients must provide a match of 25 percent of the total project cost.

DATES: Applicants are requested to send a letter of intent to participate to EPA by April 8, 1991. Completed applications must be received at the EPA by June 6, 1991. Applications received after June 6, 1991 will not be considered for an award.

ADDRESSES: Letters of intent to participate in this program should be submitted to: Grants Program Coordinator, Economics and Technology Division (TS-779), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Completed application packages should be submitted to: Grants Operations Branch, Grants Administration Division (PM-216F), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: TRI Data Capabilities Program.

FOR FURTHER INFORMATION CONTACT:

Cassandra Vail, Economics and Technology Division (TS-779), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone: 202-382-3675, TDD: 202-554-0551.

SUPPLEMENTARY INFORMATION: Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA, also known as Title III of the Superfund Amendments and Reauthorization Act of 1986) requires manufacturing facilities meeting certain size and chemical use criteria to report annually to EPA and the States their environmental releases and transfers of more than 300 toxic chemicals and chemical categories. Chemical release and transfer information from more than 24,000 facilities for 1987 and 1988 is currently available in a data base known as the Toxic Release Inventory (TRI), which is available on-line through the National Library of Medicine's TOXNET system, as well as through other electronic and non-electronic means. The 1989 TRI data are expected to be publicly available on-line in late spring of 1990. Facility submissions of 1990 reports are due to EPA and the States on July 1, 1991.

The TRI data represent a significant source of information concerning toxic chemical releases into the environment and transfers from facility sites to other locations. Many States have already

begun to use these data in the development and implementation of State toxic substance control programs. For example, States are using the TRI data to identify geographic areas, facility types, particular facilities, or particular chemicals for further investigation or control action, and to identify opportunities for waste minimization and pollution prevention within the State. This financial assistance program is designed to help States develop and enhance their ability to manage, disseminate, and use the TRI data.

In fiscal year 1990, EPA awarded \$1 million in grants to 11 States for TRI data quality assurance projects. The purpose of those grants was to build at the State level the capacity to evaluate and assure the quality of facility submissions and the data base created from them, in order to improve the utility of the TRI data for State programs to identify, communicate, prevent, or control toxic chemical risks.

This year, EPA has available \$800,000 to help States develop and implement programs of TRI data management, data use, data dissemination, and data quality assurance. EPA recognizes that States differ greatly in their current TRI data management and use capabilities. In order to assure that States at all levels of TRI data capability have fair access to this grant program, requests for assistance may be made under either of two categories: (1) TRI Program Start-Up Funds, or (2) TRI Program Advancement Funds. At this time, EPA estimates that approximately \$250,000 will be allocated to the TRI Program Start-Up category, with \$550,000 for TRI Program Advancement grants. These amounts may vary depending upon the number and quality of applications received in each category.

1. TRI program start-up funds. Start-up funds will be available only to those States that currently have only rudimentary or no TRI data capabilities but that are able to demonstrate a need for and an interest in the management and use of TRI data for identification and control of toxic risks within the State. EPA expects to award 6 to 8 grants or cooperative agreements of \$20,000 to \$50,000 in this category. The purpose of these funds is to help States develop and implement a basic program of TRI data management, data dissemination, and public access. For example, a State may receive funding to establish and maintain a State TRI data base, produce statewide or local reports of emissions, and respond to inquiries from the public, industry, State agencies, and others. Further information about

project eligibility in this category will be provided in an application guidance document which will be included in the application package. Grant funds may not be used for purchase of computer hardware. However, for this category of grants only, up to \$5,000 of the State's matching contribution may be used for purchase of computer hardware provided that the equipment is necessary for the project, is not available to the project without such purchase, will be used solely for the implementation of the project, and will continue to be used solely for EPCRA section 313 activities following the conclusion of the funded project.

2. *TRI program advancement funds.* TRI program advancement funds will be available to those States that have already developed moderate or substantial TRI data capabilities, but that need financial assistance to develop further components of their programs. EPA expects to award 5 to 8 grants of \$75,000 to \$125,000 in this category. Among the activities eligible for funding under this category are the following: using TRI data for risk screening, such as pinpointing particular facilities or geographic areas of concern; using TRI data to identify opportunities for source reduction and pollution prevention; developing and implementing technical assistance programs to aid industries in completing their TRI reporting forms, improving release estimates, and complying with the new TRI-related pollution prevention reporting requirements; developing public outreach and data dissemination programs; integrating TRI data with other environmental and permit compliance data or incorporating TRI data into other data systems such as geographic information systems; and conducting data quality assurance activities such as verifying the accuracy of facility emissions estimates. Further information about project eligibility will be provided in the application guidance document which will be included in the application package. Program advancement funds may not be used as replacement funding for a pre-existing level of effort, but rather must be used to advance an existing program beyond its current capabilities, whether through expansion of existing activities or through development of new initiatives.

Under both categories, recipients must contribute a match of 25 percent of the total cost of the project, which may be reflected in allowable direct or indirect costs. EPA asks that each State submit only one application for assistance under this program. No more than one award will be made to any one State

under this program this year. State agencies or organizations wishing to submit an application should coordinate the development of their project proposal through their State EPCRA section 313 contact. States are strongly encouraged to work closely with the following EPA Regional EPCRA section 313 coordinators in the development of their proposals:

Region I: (CT, MA, ME, NH, RI, VT)

Contact: Dwight Peavey (617) 565-3230

Region II: (NY, NJ, PR, VI)

Contact: Nora Lopez (201) 906-6890

Region III: (DE, MD, PA, VA, WV, DC)

Contact: Kurt Elsner (215) 597-1260

Region IV: (AL, FL, GA, KY, MS, NC, SC, TN)

Contact: Carlton Hailey (404) 347-1033

Region V: (IL, IN, MI, MN, OH, WI)

Contact: Dennis Wesolowski (312) 353-5907

Region VI: (AR, LA, NM, OK, TX)

Contact: Carol Peters (214) 855-7244

Region VII: (IA, KS, MO, NE)

Contact: Ed Vest (913) 551-7005

Region VIII: (CO, MT, ND, SD, UT, WY)

Contact: Dianne Groh (303) 293-1735

Region IX: (AZ, CA, HI, NV, AS, GU, MP)

Contact: Greg Czajkowski (415) 744-1116

Region X: (AK, ID, OR, WA)

Contact: Philip Wong (206) 442-4016

In evaluating applications for assistance, EPA will consider the following factors: the overall quality of the project proposal, including its technical soundness, potential benefit and feasibility of implementation; the transferability of the methodology or the product to other States; the benefit to be obtained in relation to the cost of the project; the capabilities of the State in relation to the activities proposed; the need of the State for the financial assistance and the likelihood that the assistance will lead to development of a viable TRI program or significant advancement of an existing TRI program; the likelihood of the project's continuation beyond the period of federal funding; and the priority need of the State for the assistance in terms of the extent of toxic chemical manufacture, process, use, and disposal, human exposure to toxic chemicals, and potential adverse human and environmental effects due to toxic chemicals within the State.

To apply for funds, States must:

1. Submit a letter of intent to participate to the Grants Program Coordinator, Economics and Technology Division (TS-779), USEPA, 401 M St., SW., Washington, DC 20460 by April 8,

1991. An application package containing an EPA application form and additional guidance for completing the application will be sent to all States submitting a letter of intent to participate.

2. Submit a complete application package to the Grants Operations Branch, Grants Administration Division (PM-216F), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Applications received after June 6, 1991 will not be considered for an award.

While funding under this grant program is available only for projects which have as their primary focus the development of State TRI (EPCRA section 313) data capabilities, States should be aware of a parallel EPA grant program which will award a total of approximately \$1.2 million for activities under the other sections of EPCRA. Under that program, sponsored by the Chemical Emergency Preparedness and Prevention Office within the Office of Solid Waste and Emergency Response (OSWER), States, territories, and tribes may apply for grants to enhance their EPCRA programs, particularly through assistance to Local Emergency Planning Committees. Further information about the OSWER program will publish later this month in the *Federal Register*.

The Catalog of Federal Domestic Assistance number assigned to this program is 66.705. This program is eligible for intergovernmental review under Executive Order 12372 (E.O. 12372) and is subject to the review requirements of section 204 of the Demonstration Cities and Metropolitan Development Act. States' Single Point of Contact (SPOC) must notify the following office in writing within 30 days of this publication whether their States' official E.O. 12372 process will review applications under this program: Grants Policies and Procedures Branch, Grants Administration Division (PM-216F), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, ATTN: Corinne Allison.

Applicants must contact their State's SPOC for intergovernmental review as early as possible to determine if the program is subject to the State's official E.O. 12372 process and what material must be submitted to the SPOC for review. In addition, applications for projects within a metropolitan area must be sent to the area-wide/regional/local planning agency designated to perform metropolitan or regional planning for the area for their review. SPOCs and other reviewers should send their comments concerning applications to the Grants Operations Branch listed under the ADDRESSES unit no later than 60 days

after receipt of the application or other material for review.

Dated: March 4, 1991.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 91-5554 Filed 3-7-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Niehardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0093.

Title: Application for Renewal of Radio Station License in Specified Services.

Form Number: FCC Form 405.

Action: Revision.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Annually and Other: Every decade.

Estimated Annual Burden: 3,000 responses; 2.25 hours average burden per response; 6,750 hours total annual burden.

Needs and Uses: FCC Form 405 is used by all common carriers and Multipoint Distribution Service non-common carriers to apply for renewal of radio station licenses. Section 307(c) of the Communications Act of 1934 limits the term of common carrier radio licenses to ten years and requires that written applications be submitted for renewal. Applicants granted developmental and special temporary authority are required to apply for renewal in shorter intervals—usually one year after date of grant and annually thereafter. Licensing Branches evaluate the information submitted; review the particulars and conditions of the current authorization; and take

action to renew the license for a new term. If the information were not submitted, the Commission would not be able to carry out its responsibilities mandated by the Communications Act of 1934, as amended.

OMB Number: 3060-0048.

Title: Application for Consent to Transfer of Control.

Form Number: FCC Form 704.

Action: Revision.

Respondents: Business or other for-profit (including small businesses)

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 800 responses; 8 hours average burden per response; 6,400 hours total annual burden.

Needs and Uses: FCC Form 704 is required of common carrier or noncommon carrier radio station licensees to request authority to transfer control of construction permit or license as a result of sale of entity's controlling interest or merger with another entity. The data is used by FCC staff to determine if authorization sought should be granted.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5436 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

February 28, 1991.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Niehardt, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: 3060-0127.

Title: Assignment of Authorization.

Form Number: FCC Form 1046.

Action: Revision.

Respondents: Individuals or households, state or local governments, non-profit institutions and businesses or

other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 6,000 responses; 0.83 hours average burden per response; 498 hours total annual burden.

Needs and Uses: The FCC Form 1046 is filed by applicants in the Private Land Mobile, Coast, Ground, and Microwave Radio Services for assignment of an existing authorization. Commission personnel will use the data to determine if assignment of authorization submitted with application will meet the rule requirements for issuance of a station authorization. The revision to this information collection is simply a referenced rule change on the form.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5437 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

[DA 91-265]

Advisory Committee on Advanced Television Service

March 5, 1991.

A meeting of the Advisory Committee on Advanced Television Service will be held on:

April 1, 1991, 2 p.m., Public Broadcasting Service, 1320 Braddock Place, Sixth Floor Conference Room, Alexandria, VA.

The agenda for the meeting will consist of:

1. Introductory Remarks
2. Treasurer's Report
3. Report of the Testing Laboratories
4. Subcommittee Reports
5. Consideration of the Fourth Interim Report
6. Other Business
7. Adjournment

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Advisory Committee Chairman.

Any questions regarding this meeting should be directed to Richard E. Wiley at (202) 429-7010 or William H. Hassinger at (202) 632-6460.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5439 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

[PR Docket No. 91-36; FCC 91-54]

Declaratory Ruling Request**AGENCY:** Federal Communications Commission.**ACTION:** Notice of inquiry.

SUMMARY: On March 15, 1990, the Commission released a public notice inviting comment on a *Request for Issuance of Declaratory Ruling* filed by the American Radio Relay League, Incorporated (ARRL). ARRL requests that the Commission preempt certain state statutes and local ordinances that may effectively prohibit the mere possession of mobile transceivers used by Amateur Radio Service licensees. The Commission now seeks additional comment on this matter.

DATES: Comments should be filed by June 7, 1991. Reply comments should be filed by July 8, 1991.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eric Malinen, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

In the Matter of Inquiry into the Need to Preempt State and Local Laws Concerning Amateur Operator Use of Transceivers Capable of Reception Beyond the Amateur Service Frequency Allocations.

Adopted: February 13, 1991.

Released: February 28, 1991.

By the Commission:

I. Introduction

1. On November 14, 1989, the American Radio Relay League, Incorporated (ARRL) filed a *Request for Issuance of Declaratory Ruling*¹ requesting that the Commission preempt certain state statutes and local ordinances affecting transceivers² used by Amateur Radio Service licensees. Some of these laws are so broad as to prohibit mere ownership of such transceivers if they are capable of reception of communications on certain frequencies other than amateur service frequencies. On March 15, 1990, we released a public notice³ inviting

comment on ARRL's request. Although comments were received supporting ARRL's position, no comments were received addressing certain technical issues that are before us in this matter. Furthermore, the majority of comments addressed a broader preemption than was discussed in our public notice. We initiate this present inquiry to assist us further in considering ARRL's request.

II. Background**A. State and Local laws**

2. The ARRL request discusses eleven state statutes and one local ordinance. These laws are commonly known as "scanner laws," the violation of which is typically a criminal misdemeanor, with equipment confiscation a possibility.⁴ The New Jersey statute is representative of these laws:

Any person who installs or has in any automobile, a short-wave radio receiver operative on frequencies assigned by the Federal Communications Commission for fire, police, municipal or other governmental uses, is guilty of a misdemeanor, unless a permit therefor has first been obtained from the chief of the county police, or from the chief of the police of the municipality, wherein such person resides.

This section does not apply to any fire, police or other governmental official of the State or of any county or municipality thereof.⁵

This statute regulates the mere acts of installing or possessing in a vehicle certain receivers, and it includes a permit requirement for those who are not governmental officials. Also, although the New Jersey statute prohibits the capability to receive "fire, police, municipal or other governmental" channels, our review of the subject laws cited by ARRL indicates that most of the statutes at issue are more narrowly drawn to prohibit the capability to receive police channels.

3. Most of these laws are directed primarily toward frequency reception capability by equipment located in vehicles, but at least one law reaches possession of this equipment merely outside the home.⁶ Some laws, however,

⁴ Three of the laws, however, are "aiding and abetting" type statutes, which would prohibit the use of any radio receiver in connection with criminal activity. See ARRL Request, *supra* note 1, at 10 n.7. Such statutes do not penalize a radio owner for mere possession of a radio receiver, but instead specify that, in the context of criminal activity, the unlawful act consists of both reception and divulgence (or use) of the communication. Such statutes are not addressed by this inquiry.

⁵ N.J. Stat. Ann. § 2A:127-4 (West 1985) (cited in part only). See generally note 8 *infra* (discussing case upholding New Jersey statute, which dates from 1933).

⁶ See Ky. Rev. Stat. Ann. § 432.570 (Michie/Bobbs-Merrill 1985). Under Kentucky's statute,

specifically exempt amateur operators who possess equipment in motor vehicles.⁷ These state and local laws appear to be aimed at promoting the health, safety, and general welfare of the citizenry.⁸

B. The ARRL Declaratory Ruling Request

4. ARRL makes two arguments in support of preemption. First, it states that the receiver sections of the majority of commercially available amateur station transceivers can be tuned slightly past the edges of the amateur service bands to facilitate adequate reception up to the end of amateur service bands. ARRL seeks a preemption ruling that would permit amateur operators to install in vehicles transceivers that are capable of this "incidental" reception.⁹ Although ARRL's formal request is couched in terms of this first, technical point, the request focuses almost entirely on a second, broader issue of whether state and local authorities should be permitted, via the scanner laws, to prohibit the capability of radio reception by amateur operators on public safety and special emergency frequencies that are well outside the amateur service bands.

certain users are exempted, such as radio and television stations, sellers of the "scanner" radios, disaster and emergency personnel, and those using the weather radio service of the National Oceanic and Atmospheric Administration. Some such users need to obtain local governmental permits, others do not.

⁷ See, e.g., Minn. Stat. Ann. § 299C.37 (West Supp. 1990); N.Y. Veh. & Traf. Law section 397 (McKinney 1986).

⁸ Such was noted by a New Jersey court in upholding, on other than preemptive grounds, the constitutionality of New Jersey's law.

[I]t seems reasonable to assume that there may have been a determination by the Legislature that if persons in automobiles could without restriction listen to fire, police or other governmental communications their high degree of mobility coupled with their possible desire to proceed to locations referred to in such communications, for reasons of curiosity or otherwise, might well result in interference with essential governmental activities. Likewise, the Legislature may have determined that if persons engaged in illegal activities were able to receive such information in their automobiles, they would become aware of their detection and their escape would be facilitated.

State v. Smith, 130 N.J. Super. 442, 446-47, 327 A.2d 462, 464-65 (1974).

⁹ ARRL Request, *supra* note 1, at 1, 3 n.2, 5 n.3. "Most commercial amateur radio VHF and UHF transceivers * * * are incidentally capable of reception (but not transmission) on frequencies additional to those allocated to the Amateur Radio Service. These frequencies are adjacent to amateur allocations. This is true even though the equipment is primarily designed for amateur bands, and results from the intentional effort to insure proper operation of the transceiver throughout the entire amateur band in question." *Id.* at 3 n.2.

¹ The American Radio Relay League, Inc., Request for Declaratory Ruling Concerning the Possession of Radio Receivers Capable of Reception of Police or Other Public Safety Communications (Nov. 13, 1989) (hereinafter "ARRL Request").

² Radio equipment capable of both transmission and reception. We are concerned herein, however, only with reception capability. Transmission by amateur operators on unauthorized frequencies is prohibited.

³ Public Notice 5 FCC Rcd 1981 (1990), 55 FR 10805 (Mar. 23, 1990). Comments were due by May 16, 1990, and reply comments by May 31, 1990.

5. In regard to the broader issue, ARRL argues that amateur operators have special needs for broadscale "out-of-band" reception, and that the marketplace has long recognized these needs by offering accommodating transceivers. According to ARRL,¹⁰ many commercially manufactured amateur service HF transceivers and the majority of such VHF and UHF transceivers have non-amateur service frequency reception capability well beyond the "incidental"—they can receive across a broad spectrum of frequencies, including the police and other public safety and special emergency frequencies here at issue. This additional capability, argues ARRL, permits amateur operators to take part in a variety of safety activities, some in conjunction with the military and, for example, the National Weather Service, that are legitimately available to amateur operators. Such activities benefit the public, especially in times of crisis, and some require the mobile use of the amateur stations.¹¹ ARRL states that the "vast majority" of amateur operators take part in these mobile activities, and that the widespread enforcement of laws such as New Jersey's would make illegal the possession of "essentially all" modern amateur mobile equipment.¹² (As of January 31, 1991, the Commission's licensing database indicates that there are 502,133 amateur station licenses in the United States and its territories and possessions.) ARRL states that, as a result of scanner laws, "several dozen instances of radio seizure and criminal arrest [have been] suffered by licensed amateurs in recent months."¹³

C. Comments

6. In response to our public notice on this matter, we received 45 comments, including one from ARRL, and no reply comments. All support ARRL's broader request and almost all appear to be from amateur operators. Twenty-four comments are from individuals who are aware of one or more of the subject laws and express support for ARRL's position in very general terms. Of the twenty-one remaining comments, four are from individuals who have had first-hand experience with such laws, where law enforcement warnings or confiscation have resulted from transceiver possession. Five are from individuals in law enforcement, either currently or

formerly. Six are from the following associations and organizations: Association of North American Radio Clubs, Associated Public-Safety Communications Officers, Spectrum Resources, Uniden America Corporation, Personal Radio Steering Group (which requests that we extend this proceeding to cover General Mobile Radio Service licensees), and Utilities Telecommunications Council (which requests that we extend this proceeding to cover other mobile licensees that wish to receive fire and other public safety service transmissions). Although this inquiry is primarily focused on the Amateur Radio Service, we additionally take this opportunity to request comment on whether the scanner laws are affecting other licensed radio services.

7. ARRL describes an incident in which a licensed amateur operator who resided in New York was driving his vehicle through New Jersey when the New Jersey police, acting under authority of the New Jersey statute, stopped him, arrested him, and confiscated his VHF amateur service transceiver. ARRL notes that the New York licensee, as a non-resident of New Jersey, would not be eligible to obtain the operator's permit required by the New Jersey statute for receiver operation within New Jersey.¹⁴ Another commenter, a licensed amateur operator, states that although he is a New Jersey resident, his request for a permit under the New Jersey statute has been denied by the local issuing authority on the ground that the authority issues the permits only to "emergency personnel."¹⁵ In three other comments, amateur operators state that while traveling in vehicles in Illinois, Ohio, New Jersey, and Texas, they have been stopped by state or local police and threatened with the possibility of confiscation of their mobile amateur service transceivers.¹⁶

8. A few commenters state that they have found vital to their volunteer safety work the use of certain out-of-band channels used in governmentally sponsored activities such as the Civil Air Patrol's search and rescue undertakings. Another commenter explains how use of his out-of-band receiver allowed him to listen to the National Weather Service on VHF maritime channels for critical

information during a flood. These commenters emphasize that there is a public service value in having their transceivers be capable of receiving these channels, which are not amateur, public safety, or special emergency services frequencies.¹⁷

9. As noted above, Associated Public-Safety Communications Officers, Inc. (APCO) filed a comment in support of the ARRL Request. APCO is this nation's oldest and largest public safety communications organization representing the public safety radio community. APCO states:

Every radio amateur is not the law-abiding citizen we would prefer them to be. However, it is patently unfair to penalize the entire community for the actions of the few who utilized their equipment to circumvent the law. Amateur radio operators have, historically, been vital assets to the public safety community. They have assisted government and the public in virtually every disaster that has occurred throughout the world.

There are other methods of protecting communications available to public safety, such as encryption, which is easy to procure and much less invasive of the citizen's right (or privilege) to listen to what is being transmitted over the radio. APCO believes that, in this modern age, it is the responsibility of an agency to protect its own confidential communications through the use of technology, not by arresting innocent citizens.¹⁸

III. Discussion

10. We believe additional information would assist us to make a decision in this matter.¹⁹ For example, it would be helpful to have more information on the current (and future) marketplace availability of mobile equipment meeting the restrictions of the subject laws, and on the technical and financial feasibility of modifying existing equipment to meet the laws. We especially encourage the manufacturing community, which is best suited to comment on the current state of amateur radio technology, to provide this technical information. We also desire

¹⁰ *Id.* at 12.
¹¹ See generally House Comm. on the Judiciary, Electronic Communications Privacy Act of 1986, H.R. Rep. No. 647, 99th Cong., 2d Sess. 42.
¹² ARRL Request, *supra* note 1, at 2, 12.
¹³ *Id.* at 11.
¹⁴ Comments of the American Radio Relay League, Incorporated at 2-3 (May 16, 1990).
¹⁵ Comment of Emory L. Brown, Jr. (Mar. 23, 1990).
¹⁶ Comment of L.W. Bradford (May 1, 1990); Comment of Rich Casey (May 8, 1990); Comment of Todd L. Sherman (April 21, 1990).
¹⁷ It should be noted that in the 30-50 MHz, 150-174 MHz, and 450-512 MHz bands the public safety and special emergency services channels are intermixed with frequencies allocated to non-public safety services. Thus, eliminating the capability to receive the public safety channels would have to be done on a case-by-case, frequency-by-frequency basis. In these segments of the spectrum, there does not exist a contiguous range of frequencies that constitute a "public safety band," with upper and lower frequency limits, that could more easily be excluded.
¹⁸ Comments of APCO at 2-3 (May 16, 1990).
¹⁹ Comments filed pursuant to our previous public notice are deemed to be filed in response to this Notice of Inquiry as well, and therefore need not be refiled. We do not, however, discourage additional filings from the entities who filed previously.

comment from the states and municipalities that have enacted the subject laws. Specifically, we solicit comment on the following questions:

(1) Is there VHF or UHF mobile (or portable) amateur equipment now being manufactured that complies with the state and local laws in question? If so, give the purchase cost and the make and model numbers.

(2) What percentage of existing VHF or UHF mobile amateur equipment has a reception capability (a) only on amateur service bands, (b) on the amateur bands plus a capacity just beyond the amateur bands (within 25 kHz of the band edge), and (c) on the amateur bands plus a capability on (at the least) any of the public safety or special emergency services channels? What are the above percentages when calculated only in the context of equipment that is currently being manufactured (as opposed to equipment that no longer is manufactured or is built by an amateur)? What are the purchase costs for such equipment?

(3) What percentage of amateur operators purchase and use manufactured mobile equipment?

(4) What is necessary technically for manufacturers to produce equipment that complies with the laws, and what are the associated costs?

(5) What is required technically to modify amateur equipment that is capable of receiving on police radio service channels or other public safety or special emergency services channels to eliminate such reception capability, and what is the cost associated with such a modification? Does the intercategory sharing permitted in the private land mobile services²⁰ and the diversity of frequency restrictions throughout the country affect the technical requirements or costs of such modifications?

(6) What specific instances have occurred where the state and local laws in question have adversely affected amateur radio operation?

(7) Is there a public interest in having amateur equipment available that can receive non-amateur frequencies, e.g., an interest in providing a pool of equipment that facilitates emergency operations in states where local authorities expressly desire the assistance of amateur licensees?

(8) Given that the amateur radio equipment market is essentially world-

wide, what would be the effect, if any, on the availability and price of amateur equipment if United States requirements were made more restrictive than those of the rest of the world? Do any other countries have restrictions on amateur radio transceiver receipt of public safety transmissions?

(9) What effect to the scanner laws have on the interstate sale of amateur service equipment and the interstate transport of equipment by amateur licensees?

IV. Procedural Matters

11. Accordingly, we adopt this *Notice of Inquiry* under the authority contained in sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended 47 U.S.C. 154(i), 303(r), and 403. Pursuant to applicable procedures set forth in §§ 1.415, 1.419, and 1.430 of the Commission's Rules, 47 CFR 1.415, 1.419, & 1.430, interested parties may file comments on or before June 7, 1991, and reply comments on or before July 8, 1991. Extensions of these time periods are not contemplated. We will consider all relevant and timely comments before taking final action in this proceeding. In reaching its decision, the Commission may consider information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file and the fact of our reliance on such information is noted in any subsequent actions. As noted above in a footnote, comments filed pursuant to our previous public notice are deemed to be filed in response to this Notice of Inquiry as well, and therefore need not be refiled. We do not, however, discourage additional filings from the entities who filed previously.

12. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Persons who wish to participate informally may do so by submitting one copy. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-5440 Filed 3-7-91; 8:45 am]

BILLING CODE 6712-01-M

Julie J. Carey; Applications for FM Stations

1. The Commission has before it the following mutually exclusive applications for 4 new FM stations:

Applicant, city and state	File No.	MM Docket No.
I		
A. Julie J. Carey; Nashville, IN.	BPH-891011ML	91-39
B. Frank A. Rogers; Nashville, IN.	BPH-891012MI	
C. Jacqueline D. Watson; Nashville, IN.	BPH-891012MZ (Previously Returned)	

Issue heading and applicant(s)

1. Air Hazard, A
2. Comparative, A,B
3. Ultimate, A,B

II		
A. Morgan County Industries, Incorporated; West Liberty, Kentucky.	BPH-891222MG	91-37
B. Woodford F. May West Liberty, Kentucky.	BPH-891227ME	

Issue heading and applicant(s)

1. Air Hazard, A,B
2. Comparative, A,B
3. Ultimate, A,B

III		
A. Leon F. Petterson; Live Oak, FL.	BPH-891002MK	91-38
B. Marshall W. Rowland, Sr.; Live Oak, FL.	BPH891002MM	
C. Suwannee Broadcast, Inc.; Live Oak, FL.	BPH-891002MO	

Issue heading and applicant(s)

1. Comparative, A,B,C
2. Ultimate, A,B,C

IV		
A. Royse Radio, Inc.; Horse Cave, KY.	BPH-891011MB	91-40
B. James B. Myers, III; Horse Cave, KY.	BPH-891012NI	

Issue heading and applicant(s)

1. Comparative, A,B
2. Ultimate, A,B

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues

²⁰ See 47 CFR 90.178. For example, a Police Radio Service licensee may be authorized to operate on frequencies allotted to the Highway Maintenance Radio Service, the Forestry-Conservation Radio Service, or any other public safety land mobile service.

whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

*Assistant Chief, Audio Services Division,
Mass Media Bureau.*

[FR Doc. 91-5577 Filed 3-7-91; 8:45am]

BILLING CODE 8712-01-M

FEDERAL HOUSING FINANCE BOARD

[No. FHFB 91-43.5]

Index Rates for Adjustable-Rate Mortgages

AGENCY: Federal Housing Finance Board.

ACTION: Notice of substitution of indexes for adjustable-rate mortgages and request for comments.

SUMMARY: The Federal Housing Finance Board ("Finance Board") hereby gives notice and requests comments on its proposal to substitute substantially similar mortgage index rates for adjustable-rate mortgages ("ARMs") for certain nonstandard index rates currently made available in its Monthly Survey of Rates and Terms on Conventional 1-Family Nonfarm Mortgage Loans ("Monthly Interest Rate Survey" or "MIRS"). The Finance Board proposes these changes in order to improve the overall quality of the MIRS by replacing statistically unreliable data with more accurate, timely, and practical information, and to reduce the reporting burden on institutions subject to the survey by no longer collecting data of very limited economic or financial importance. The Finance Board requests public comment regarding the practical effects of implementing these proposed changes.

DATES: Comments must be received in writing by April 22, 1991.

ADDRESSES: Comments should be mailed to: Leonard H. O. Spearman, Jr., Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, where comments will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Senior Financial Economist, (202) 408-2845, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: Section 402(e)(3) of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183 (August 9, 1989), provides that the Finance Board "shall take such action as may be necessary to assure that the indexes prepared by the * * * Federal Home Loan Bank Board * * * immediately prior to the enactment of (FIRREA) and used to calculate the interest rate on adjustable rate mortgage instruments continue to be available." Section 402(e)(4) of FIRREA provides that "[i]f any agency can no longer make available an index," it may substitute a "substantially similar" index if it determines, after notice and opportunity for comment, that (1) the new index is based upon data substantially similar to that of the original index; and (2) the substitution of the new index will result in an interest rate substantially similar to the rate in effect at the time the original index became unavailable.

The MIRS, which was prepared by the Federal Home Loan Bank Board before the enactment of FIRREA, is now being compiled by the Finance Board pursuant to the requirement of FIRREA. A small number of mortgage lenders use the index rates proposed to be changed to calculate the interest rates on existing ARMs. ARMs based on mortgage rate indexes now comprise only a very small proportion of total new mortgages. Most new ARMs are linked to either the yield on U.S. Treasury securities or a cost-of-funds index. Furthermore, most new ARMs that are linked to a mortgage rate use the "National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders." None of the changes proposed by the Finance Board will affect this series.

The Finance Board believes that the intent of section 402(e)(3) is to ensure that accurate, timely and reliable data continues to be made available, and to permit the substitution of substantially similar indexes where data is not sufficiently reliable. The Finance Board therefore has the authority and

discretion to modify its survey methods from time to time to ensure that the public receives quality data. The Finance Board does not believe that section 402(e)(3) is intended to require the reporting of identical data simply because it was published in the past. The Finance Board has determined that the current indexes at issue are not sufficiently reliable for statistical purposes, and need to be replaced with other more reliable and timely indexes. In addition, pursuant to section 402(e)(4), the Finance Board "can no longer make available" the indexes because they are not sufficiently statistically reliable. Accordingly, the Finance Board may substitute substantially similar indexes for the indexes proposed to be changed.

The Finance Board proposes to implement four changes in the types of monthly information derived from the MIRS that it now makes available, as follows:

(1) The Finance Board proposes to substitute the data from the Federal Home Loan Mortgage Corporation's ("Freddie Mac") Primary Market Survey as the substantially similar successor index for those ARMs using the mortgage commitment rate data from the MIRS as an index. The MIRS mortgage commitment rate data is subject to a five-week reporting lag, and duplicates the similar weekly survey conducted by Freddie Mac. In addition, the data on mortgage commitment rates is not useful to lenders or borrowers because the survey does not ask to what index the ARM is linked.

(2) The Finance Board proposes to designate the MIRS's newly built homes index as the substantially similar index to succeed the combined construction/purchase loan index in the MIRS. Combined construction/purchase loans are loans typically made to small home builders, and combine a construction and permanent loan in a single transaction. These loans comprise only about five percent of the survey, and the data on such loans is statistically unreliable on a monthly basis because of the small sample size.

(3) The Finance Board proposes to designate the National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders as the substantially similar successor index for ARMs that use a contract rate series from the Finance Board's internal 57-J and 57-K Reports. The Finance Board also proposes to designate the National Average Effective Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders as the

substantially similar series for ARMs that use an effective rate series derived from the Reports. The data contained in the 57-J and 57-K Reports is statistically unreliable because of the small sample sizes. Because of the variety of data contained in the 57-J and 57-K Reports with respect to type of loan, type of property, and geographic classification, there is no perfect choice for a single successor series. However, the Finance Board believes that the two series proposed for substitution are based on more reliable data than that currently contained in the Reports and are the most readily available substitute series.

(4) The Finance Board proposes to publish the MIRS data on home loans closed for the 32 selected metropolitan areas on a quarterly instead of monthly basis (*i.e.*, to designate the quarterly series on metropolitan mortgage interest rates as the substantially similar successor to the monthly series). The data on loans closed for the selected metropolitan areas is statistically unreliable when published on a monthly basis because of the small sample size.

All of the proposed new indexes are based upon data substantially similar to that of the original indexes. The Freddie Mac Primary Market Survey data uses similar mortgage commitment rate data but is based on standardized loans and is more timely than the MIRS mortgage commitment rate index. The MIRS newly built homes index is based on a larger sample of newly built homes. The National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders is based on national average rate data of a larger sample size than the similar regional average rate data contained in the Finance Board's internal 57-J and 57-K Reports. Similarly, the proposed National Average Effective Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders is based on data similar to the effective rate series contained in the Reports but from a larger sample size. The MIRS data on loans closed for the 32 selected metropolitan areas will continue to be made available, except that it will be published on a quarterly instead of monthly basis.

Because the new indexes are based on data substantially similar to the current data in the MIRS, the Finance Board believes that they will result in interest rates substantially similar to the rates in effect at the time the original indexes become unavailable.

Dated: February 28, 1991.

J. Stephen Britt,
Executive Director, Federal Housing Finance Board.

[FR Doc. 91-5555 Filed 3-7-91; 8:45 am]

BILLING CODE 6725-01-M

FEDERAL MARITIME COMMISSION

[Fact Finding Investigation No. 19]

Passenger Vessel Financial Responsibility Requirements; Extension of Time

At the request of the Investigative Officer, the time for filing the Investigative Officer's final report is extended thirty days, to April 16, 1991. By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 91-5545 Filed 3-7-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Cleo L. Craig Trust, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the

reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 27, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Cleo L. Craig Trust*, to acquire 16.34 percent; *Cleo L. Craig Grandchildren Trust*, *C.L. Craig and Michael T. Craig*, Trustees, to acquire 83.18 percent of the voting shares of *Lawton Securities Bancshares, Inc.*, Lawton, Oklahoma, and thereby indirectly acquire *The Security Bank and Trust Company*, Lawton, Oklahoma.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *John G. Sorenson, Jr. and Don C. Ballard*, both of Salt Lake City, Utah; to acquire an additional 52.89 percent of the voting shares of *Home Credit Corporation*, Salt Lake City, Utah, for a total of 80.64 percent, and thereby indirectly acquire *Home Credit Bank*, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, March 4, 1991.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 91-5486 Filed 3-7-91; 8:45 am]

BILLING CODE 6210-01-F

First National Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may

express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than March 27, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First National Bancorp, Inc.*, Monroe, Wisconsin; to acquire 100 percent of the voting shares of Citizens State Bank, Belleville, Wisconsin.

Board of Governors of the Federal Reserve System, March 4, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-5488 Filed 3-7-91; 8:45 am]

BILLING CODE 8210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

On Fridays, the Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following are those

information collections recently submitted to OMB.

1. **Survey of Physician Interactions with Pharmaceutical Manufacturers—NEW**—This request for information on physicians' offers from drug manufacturers is needed to determine the extent and nature of promotional activities which may be in violation of the anti-kickback provisions. The information will be used by the Office of the Inspector General to develop strategies for future investigative efforts. Respondents: physicians; Annual Number of Respondents: 600; Annual Frequency of Response: one time; Average Burden per Response: 15 minutes; Total Annual Burden: 150 hours.

2. **State Policies, Procedures, and Experiences in Providing Child Care Services to AFDC JOBS participants—NEW**—This information will be collected from the states to provide a baseline picture of state activities related to child care services for JOBS participants. The Office of the Inspector General will use the information to assess the state activities and develop recommendations for improved program efficiencies. Respondents: State Governments; Annual Number of Respondents: 50; Annual Frequency of Response: one time; Average Burden per Response: 5.5 hours; Total Annual Burden: 275 hours.

OMB Desk Officer: Allison Herron.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 619-0511. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: OMB Reports Management

Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: February 26, 1991.

James F. Trickett,

Deputy Assistant Secretary for Management and Acquisition.

[FR Doc. 91-5273 Filed 3-7-91; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 91N-0047]

Rorer Pharmaceutical Corp., et al.; Withdrawal of Approval of Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 48 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: April 8, 1991.

FOR FURTHER INFORMATION CONTACT:

Lola E. Batson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8036.

SUPPLEMENTARY INFORMATION: The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA No.	Drug	Applicant
18-774	Nitrol IV (nitroglycerin for infusion)	Rorer Pharmaceutical Corp., 500 Virginia Dr., Fort Washington, PA 19034.
80-241	Prednis (prednisolone) Tablets, 5 mg	Do.
80-447	Nitrofurantoin Tablets, 100 mg (only)	Bolar Pharmaceutical Co., Inc., 33 Ralph Ave., Copiague, NY 11076-0030.
80-719	Sulfisoxazole Tablets, USP	The Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001-0199.
83-370	Dramamine Tablets	Richardson-Vicks Inc., One Far Mill Crossing, Shelton, CT 06484.
83-666	Reserpine 0.125 mg and Hydrochlorothiazide 50 mg Tablets	Bolar Pharmaceutical Co., Inc.,
83-861	Chlor-PZ (chlorpromazine hydrochloride) Tablets	Rorer Pharmaceutical Corp.
83-900	Benzedrine (amphetamine sulfate) Tablets	Smith Kline & French Laboratories, 1500 Spring Garden St., Philadelphia, PA 19101.
84-328	Nitrofurantoin Capsules, 50 mg and 100 mg	Bolar Pharmaceutical Co., Inc.,
85-139	Chlorpheniramine Maleate Tablets, 4 mg	Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11552.
85-166	Dimenhydrinate Tablets, 50 mg	Do.
85-172	Niacin Tablets, 500 mg	Do.
85-199	Phendimetrazine Tartrate Tablets, 35 mg (Yellow)	Private Formulations, Inc., 460 Plainfield Ave., Edison, NJ 08818-1904.
85-231	Pyriminamine Maleate Tablets, 25 mg	Chelsea Laboratories, Inc.
85-248	Trichlormethiazide and Reserpine Tablets, 4 mg/0.1 mg	Bolar Pharmaceutical Co., Inc.,
85-333	Aminophylline Tablets, 200 mg	Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.
85-664	Promethazine Hydrochloride Tablets, 50 mg	Chelsea Laboratories, Inc.
85-769	Brompheniramine Maleate Tablets, 4 mg	Do.

ANDA No.	Drug	Applicant
85-792	Sodium Secobarbital Capsules, 100 mg	Do.
85-827	Hydralazine Hydrochloride and Hydrochlorothiazide Tablets	Do.
85-840	Dexamethasone Tablets, 1.5 mg	Do.
85-841	Bethanechol Chloride Tablets, 5 mg	Do.
85-862	Trichlormethiazide Tablets, 4 mg	Do.
85-986	Promethazine Hydrochloride Tablets, 12.5 mg	Do.
86-026	Spironolactone with Hydrochlorothiazide Tablets, 25 mg/25 mg	Do.
86-178	Glycopyrrolate Tablets, 2 mg	Do.
86-281	Hexabamate II (tridihexethyl chloride 25 mg and meprobamate 400 mg) Tablets	Do.
86-823	Hydrocortisone Cream, USP, 0.5%	Pharmaceutical Associates, Inc., P.O. Box 128, Conestee, SC 29636.
86-866	Chlorpropamide Tablets, 250 mg	Chelsea Laboratories, Inc.
86-948	Chlorzoxazone Tablets, 250 mg	Do.
87-075	MD-50 (diatrizoate sodium injection, USP 50%)	Mallinckrodt, Inc., 675 McDonnell Blvd, P.O. Box 5840, St. Louis, MO 63134.
87-300	Fluonid (fluocinolone acetonide) 0.025% Gel	Herbert Laboratories, Inc., 2525 Dupont Dr., Irvine, CA 92715-9990.
87-273	Hydroxyzine Hydrochloride Injectable	Atlanta, Inc., 60 Baylis Rd., Melville, NY 11747.
87-936	Arm-A-Med (sioprotrenol hydrochloride), 0.062%	Armour Pharmaceutical Co., 500 Virginia Dr., Fort Washington, PA 19034.
87-958	Heparin Lock Flush Solution, USP, 10 units/mL with benzyl alcohol, 2 mL in 2 mL vial.	Solopak Laboratories, 1845 Tonne Rd., Elk Grove Village, IL 60007-5125.
87-959	Heparin Lock Flush Solution, USP, 100 units/mL with benzyl alcohol, 1 mL in 2 mL vial.	Do.
88-031	Hydroflumethiazide Tablets, 50 mg	Bolar Pharmaceutical Co., Inc.
88-033	Dipyridamole Tablets, 25 mg	Purepac Pharmaceutical Co.
88-315	Dipyridamole Tablets, 25 mg	UDL Laboratories, Inc., P.O. Box 10319, Rockford, IL 61131-3019.
88-528	Hydroflumethiazide Tablets, 50 mg	Chelsea Laboratories, Inc.
88-680	Diphenhydramine Hydrochloride Elixir, 12.5 mg/5 mL	Naska Pharmacol Co., Inc., 55 Plant Ave., Hauppauge, NY 11788.
88-824	Procalinamide Hydrochloride Injection 100 mg/mL	Pharmafair, Inc., 110 Kennedy Dr., Hauppauge, NY 11788.
88-830	Procalinamide Hydrochloride Injection, 500 mg/mL	Do.
88-862	Hydroxyzine Hydrochloride Injection, 25 mg/mL (vials)	Do.
89-106	Hydroxyzine Hydrochloride Injection, 25 mg/mL (syringes)	Do.
89-107	Hydroxyzine Hydrochloride Injection, 50 mg/mL (syringes)	Do.
89-376	Nitrol Patch (nitroglycerin transdermal system), 5 mg/24 hr	Paco Research Corp., 1705 Oak St., Lakewood, NJ 08701.
89-445	Monoparin Injection (heparin, sodium injection, USP), 5,000 USP units/mL	Fisons Corp., Two Preston Ct., Bedford, MA 01730.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82), approval of the abbreviated new drug applications listed above, and all supplements thereto, is hereby withdrawn, effective April 8, 1991.

Dated: February 27, 1991.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 91-5425 Filed 3-7-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91N-0072]

Superpharm Corp.; Proposal To Withdraw Approval of an Abbreviated New Drug Application for Ibuprofen Tablets; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) proposes to withdraw approval of abbreviated new drug application (ANDA) 70-708 held by Superpharm Corp., 1769 Fifth Ave., Bayshore, NY 1176 (Superpharm). The grounds for the proposed withdrawal

are that (1) the application contains untrue statements of material fact; (2) new evidence of clinical experience not contained in the application or not available until after the application was approved, evaluated together with the evidence available when the application was approved, shows that the drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved; and (3) based on new information, evaluated together with the evidence available when the application was approved, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

DATES: A hearing request is due on April 8, 1991; data and information in support of the hearing request are due on May 7, 1991.

ADDRESSES: A request for hearing, supporting data, and other comments should be identified with Docket No. 91N-0072, and submitted to the Dockets Management Branch (HFA-305), rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mary E. Catchings, Center for Drug Evaluation and Research (HFD-366),

Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8041.

SUPPLEMENTARY INFORMATION:

I. Background

Superpharm holds ANDA 70-708 for Ibuprofen Tablets 400 milligrams (mg). This product is a generic version of Upjohn's Motrin Tablets 400 mg.

To support approval of ANDA 70-708, Superpharm submitted to FDA a bioequivalence study conducted by Bio-Research Laboratories, Ltd. This study, purportedly utilizing from product Superpharm's batch 060385, demonstrated that Superpharm's Ibuprofen Tablets 400 mg were bioequivalent to Motrin Tablets 400 mg.

This showing was critical to the approval of Superpharm's product. Motrin, the listed drug under section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(6)), was approved based on, among other things, safety studies and adequate and well-controlled clinical efficacy studies showing that the product is safe for its intended uses and has the effects claimed for it. Superpharm's generic version of Motrin, Ibuprofen Tablets 400 mg, was approved without the submission of such studies. Instead, Superpharm's product was

approved based on a finding that Superpharm's product was bioequivalent to Motrin. The finding of bioequivalence is necessary to support the conclusion that Superpharm's product will be therapeutically equivalent to Motrin.

In addition to the bioequivalence study, Superpharm submitted to the ANDA dissolution data, batch production records, and stability data, which were necessary for approval. FDA used the dissolution data to assess the comparability of Superpharm's product and Motrin Tablets and to establish an appropriate dissolution specification for future, commercial batches of Superpharm's product. The dissolution specification helps provide assurance that commercial batches of Superpharm's product remain bioequivalent to Motrin Tablets.

The batch production records are significant because they characterize the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of the Superpharm product shown to be bioequivalent to Motrin Tablets. In general, these same methods, facilities, and controls must be applied to production of commercial batches of Superpharm's product to provide assurance that the product remains bioequivalent to Motrin Tablets.

The stability data provide assurance that Superpharm's product will retain its physical and chemical characteristics and its bioequivalence throughout its labeled shelflife.

FDA discovered that there are untrue statements and discrepancies in Superpharm's ANDA concerning the manufacture and testing of batches used to support approval of ANDA 70-708. These untrue statements and discrepancies constitute new information that raises serious questions about the identity and characteristics of the batches that were used to demonstrate the bioequivalence of Superpharm's product and, thus, raises concerns about the actual bioequivalence of Superpharm's marketed product to Motrin. This new information is derived from (1) a recent inspection of Superpharm, (2) an audit of the firm by an outside contractor, and (3) meetings between FDA and Superpharm representatives. The scope and significance of the untrue statements and discrepancies call into question the reliability of all data submitted to FDA to support approval of ANDA 70-708 for Ibuprofen Tablets 400 mg.

A discussion of the new information follows:

To support approval of ANDA 70-708, Superpharm submitted a copy of a batch production record for batch 060385, which was used in the bioequivalence study. Superpharm also submitted comparative in vitro dissolution data using product from batch 060385. In addition, Superpharm submitted stability data from batches 310385 and 320385 to support approval of ANDA 70-708. During an inspection of Superpharm focusing on ANDA approval of ibuprofen, FDA inspectors found two versions of a batch production record for batch 060385. One version indicates that production occurred March 8 and 9, 1985, and identifies the manufacture of a 10,000 (10M) tablet batch of orange film-coated tablets. The other version indicates that production occurred March 20 and 21, 1985, and identifies the manufacture of a 10M tablet batch of white film-coated tablets. This second version of the batch record was submitted to FDA in ANDA 70-708. Current labeling describes Superpharm's Ibuprofen Tablets 400 mg as follows: "White, round, standard convex tablet embossed with SP-170 on one side and 400 on the other side."

FDA's inspection of Superpharm identified discrepancies concerning both versions of batch 060385. As referenced above, discrepancies exist regarding the description, particularly the color, of the tablets used in bioavailability testing. In addition to the color discrepancies noted in the batch records, other records show further inconsistencies in the description of batch 060385. Superpharm's "Quality Control Finished Product Monograph and Report" submitted to the ANDA describes tablets from batch 060385 as "white, round film coated tablets, debossed with SP 170 on one side and 400 on the other." The firm's "Laboratory Notebook Book #8502," page 9, describes tablets from batch 060385 as "orange sugar coated round tablet embossed with SP 170." This description was changed to "white film coated round tablet embossed with SP 170." The same notebook, pages 90 and 92, describes tablets from batch 060385 as "white, oval shaped, film coated tablet, embossed with SP 171." The coating records dated March 24, 1985, indicate that Superpharm's ibuprofen 400 mg tablet was coated in a manner that resulted in a white, film-coated tablet. No coating records were found to document the coating of orange coated tablets for batch 060385. Moreover, the description of batch 060385 tablets in the ANDA as white is inconsistent with the description of the tablets in the bioavailability study report that was submitted to ANDA 70-708 to support

approval of ibuprofen tablets 400 mg. Bio-Research Laboratories, Ltd., which conducted the bioavailability study, described Superpharm's ibuprofen tablets 400 mg as "Large round orange matte tablets" and as "Matte, Round, Orange, Unmarked Tablet." Upjohn's Motrin Tablets 400 mg are described as "Large round orange shiny tablets, with 'MOTRIN 400 mg' printed on one side" and as "shiny round orange tablet marked MOTRIN 400 mg."

FDA's inspection also revealed discrepancies concerning the color designation of batches 310385 and 320385, the additional stability batches. The batch records describe the tablets from these batches as orange film-coated tablets whereas the coating records describe the tablets as white. Additionally, Superpharm's Laboratory Notebook Book #8502, pages 13 and 17, describes the tablets as "Orange sugar coated round tablet embossed with SP 170." This designation was changed to "White film coated round tablet embossed with SP 170."

Discrepancies exist concerning the date of manufacture of batch 060385 and concerning manufacturing operations/steps used in production of the batch. The batch record submitted to FDA shows manufacture of batch 060385 on March 20 and 21, 1985. A research and development (R&D) production log shows manufacture of the batch on March 8 and 11, 1985. The referenced batch records do not show manufacture of batch 060385 on March 11, 1985, and the production log does not show manufacture of the batch on March 9, 20, and 21, 1985, as the two versions of the batch records indicate. In addition, the March 8 and 9, 1985, batch records do not show that each significant step in the manufacturing or processing of batch 060385 was supervised or checked. The R&D production log does not reference compression of the batch. Finally, no packing records or batch disposition records exist for either batch.

There are inconsistencies in the records concerning the raw materials used in the manufacture of batch 060385. The raw material inventory cards show use of ibuprofen active ingredient R-4217 in batch 060385 on March 8, 1985. However, no record exists showing additional use of this active ingredient on March 20 and 21, 1985, as indicated on batch record 060385 submitted to the ANDA. Moreover, although the two batch records for batch 060385 show use of multiple excipients, the excipient raw material inventory records corresponding to the lots of excipients identified on the batch records as being

used in the manufacture of the batch do not show withdrawals of any of the raw materials for use in making the batch.

All of the discrepancies discussed above raise questions about the identity and characteristics of the batches used to perform tests necessary for approval of ANDA 70-708. Some of the discrepancies indicate that certain records were falsified, although which records were actually falsified is not clear. These discrepancies and falsifications cast doubt on the validity of all representations made by Superpharm about batches 060385, 310385, and 320385. They also raise questions about whether the product approved under the ANDA is representative of the product marketed by Superpharm.

II. Conclusions, Findings, and Proposed Action

As discussed above, ANDA 70-708 contains a number of untrue statements concerning bioequivalence, dissolution, manufacturing procedures and controls, and stability. Statements on these matters are material in that they may affect the agency's decision to approve an application.

Moreover, these untrue statements, together with the aforementioned discrepancies, constitute new information that raises significant questions about the reliability and adequacy of the data provided on the batches used in support of the approval of ANDA 70-708.

Without reliable information concerning the identity, characteristics, and manufacture of the batches used for bioequivalence, dissolution, and stability studies necessary for approval, the agency cannot assume that the results of these studies are applicable to the approved, marketed product. In the absence of reliable data demonstrating acceptable stability, dissolution, and bioequivalence to the listed drug, there is a lack of evidence of safety and a lack of substantial evidence of effectiveness.

Although ANDA's may be approved without the submission of safety studies and adequate and well-controlled clinical efficacy studies, which are required under 21 U.S.C. 355(d), these approvals are supported by such studies based on the submission of information to show bioequivalence to a listed, approved drug. The listed drug, to be approved by the agency, must be demonstrated safe and effective based on safety studies and clinical efficacy studies satisfying the substantial evidence requirement of 21 U.S.C. 355(d) or must be related through bioequivalence data to another drug that has been demonstrated safe and

effective based on such studies. In the absence of reliable information showing bioequivalence between the generic drug at issue and the listed drug, and in the absence of information demonstrating stability of the generic drug throughout its labeled shelflife, there is no basis for concluding that the safety and efficacy studies supporting the approval of the listed drug likewise support the claims of safety and efficacy on the part of the generic drug.

Accordingly, the Director of the Center for Drug Evaluation and Research finds that (1) ANDA 70-708 contains untrue statements of material fact; (2) new evidence of clinical experience, not contained in the application or not available until after the application was approved, evaluated together with the evidence available to him when the application was approved, shows that the drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved; and (3) on the basis of new information before him with respect to the drug, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof. Based on these findings, the Director proposes to withdraw approval of ANDA 70-708, Ibuprofen Tablets 400 mg.

III. Notice of Opportunity for Hearing

Notice is hereby given to the holder of the ANDA listed above and to all other interested persons, that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the act (21 U.S.C. 355(e)), withdrawing approval of ANDA 70-708 and all amendments and supplements thereto on the grounds stated above.

In accordance with section 505 of the act and 21 CFR part 314, the applicant is hereby given an opportunity for a hearing to show why approval of the ANDA should not be withdrawn.

An applicant who decides to seek a hearing shall file: (1) on or before April 8, 1991, a written notice of appearance and request for hearing, and (2) on or before the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing,

submissions of data, information, and analyses to justify a hearing, other comments, and the grant or denial of a hearing are contained in 21 CFR 314.200 (except that the requirement in 21 CFR 314.200 (d)(1) and (d)(2) that the applicant submit adequate and well-controlled clinical efficacy studies does not apply) and in 21 CFR Part 12.

The failure of the applicant to file a timely written notice of appearance and request for hearing, as required by 21 CFR 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of that person's drug product. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the application, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice of opportunity for hearing are to be filed in six copies. Except for data and information prohibited from public disclosure under section 301(j) of the act or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Section 505(j)(6)(C) of the act requires that FDA remove from its approved product list (FDA's publication "Approved Drug Products with Therapeutic Equivalence Evaluations") (the list) any drug that was withdrawn for grounds described in the first sentence of section 505(e) of the act. If the agency determines that withdrawal of the drug subject to this notice is appropriate, FDA will announce its removal from the list in the Federal Register notice announcing the withdrawal of approval of the drug.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: February 27, 1991.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 91-5424 Filed 3-7-91; 8:45 am]

BILLING CODE 4160-01

[Docket No. 90D-0427]

Direct Reference Authority for Class III Medical Devices Without a Premarket Notification (510(k)) or an Approved Premarket Approval Application (PMA); Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide (CPG) 7124.30 "Direct Reference Authority for Class III Medical Devices without a Premarket Notification (510(k)) or an Approved Premarket Approval Application (PMA)." This CPG establishes criteria for direct reference authority, that is to issue a regulatory letter or recommend seizure, for new class III medical devices that have never been reviewed by FDA, and class III medical devices that have premarket approval but now claim an unapproved intended use.

DATES: Comments may be made at any time.

ADDRESSES: Submit written requests for single copies of CPG 7124.30 "Direct Reference Authority for Class III Medical Devices without a Premarket Notification (510(k)) or an Approved Premarket Approval Application (PMA)" to the Division of Small Manufacturers Assistance, Center for Devices and Radiological Health (HFZ-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on CPG 7124.30 to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the CPG and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Eric Latish, Center for Devices and Radiological Health (HFZ-323), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301-427-1118.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of this CPG which sets forth criteria for issuing a regulatory letter and for recommending direct reference seizure to the Office of Regulatory Affairs, Division of Case Management and Operations (HFC-210), for devices that are in commercial distribution without a PMA. This CPG relates to new class III medical devices that have never been reviewed by FDA and class III medical devices that have a PMA but are intended for a new, unapproved use. Such devices are required to have an approved PMA.

A direct reference (device) seizure is one that bypasses review by the Center for Devices and Radiological Health. Instead, the district office recommendation is processed only by the Office of Regulatory Affairs, the Office of General Counsel, and the U.S. Attorney, in that order.

The statements made herein are not intended to create or confer any rights, privileges, or benefits on or for any private person, but are intended merely for internal guidance.

Authority: This notice is issued under 21 CFR 10.85.

Dated: February 28, 1991.

Gary Dykstra,

Acting Associate Commissioner, for Regulatory Affairs.

[FR Doc. 91-5511 Filed 3-7-91; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place NW., Washington, DC 20005, (202) 633-7257. For information on the Public

Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, 6001 Montrose Road, room 702, Rockville, MD 20852, (301) 443-8593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the *Federal Register* a notice of each petition filed. Set forth below is a list of petitions received by PHS on September 25, 1990. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability

injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, room 8-05, Rockville, Maryland 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

- George and Alice Ellis on behalf of Rosemary Ellis, Springfield, Tennessee, Claims Court Number 90-1250 V
- Connie Woodward on behalf of Amanda Woodward, Huntington, West Virginia, Claims Court Number 90-1251 V
- Judith Bergman on behalf of Laura Bergman, Clawson, Michigan, Claims Court Number 90-1252 V
- Gloria McAfee on behalf of Elizabeth McAfee, Deceased, Macon, Georgia, Claims Court Number 90-1253 V
- Steven and Bonnie Mulholland on behalf of Heather Mulholland, Lebanon, Pennsylvania, Claims Court Number 90-1254 V
- Josue and Sharon Moreno on behalf of Joshua Moreno, Dallas, Texas, Claims Court Number 90-1255 V
- Carol Fonken on behalf of Andrew D. Fonken, Watertown, South Dakota, Claims Court Number 90-1256 V
- Sharon Burgess on behalf of Jodi Burgess, Whitehall, Michigan, Claims Court Number 90-1257 V
- Frank and Valerie Hargett on behalf of Melissa Hargett, Longmont, Colorado, Claims Court Number 90-1258 V
- Claud and Dorothy Adams on behalf of Carolyn Adams, Decaturville, Tennessee, Claims Court Number 90-1259 V
- John and Terry Livingston on behalf of Kristen Livingston, San Antonio, Texas, Claims Court Number 90-1260 V
- Tonya Bates, Memphis, Tennessee, Claims Court Number 90-1261 V
- Susan Rosapepe, Bridgeport, Connecticut, Claims Court Number 90-1262 V
- Jackie S. and Emily Maple on behalf of Jackie P. Maple, Marietta, Georgia, Claims Court Number 90-1263 V
- Roberta Munson on behalf of Eric Munson, Sacramento, California, Claims Court Number 90-1264 and 90-1265 V
- Paul and Sandra Louie on behalf of Genevieve Louie, Deceased, Livermore, California, Claims Court Number 90-1266 V
- Sharon Waters on behalf of Sherry Irene Waters, Waycross, Georgia, Claims Court Number 90-1267 V
- Shirley Watts on behalf of Cecelia Watts, Augusta, Georgia, Claims Court Number 90-1268 V
- Susan Dean on behalf of Jason Dean, Baltimore, Maryland, Claims Court Number 90-1269 V
- Mark Solak, Colden, New York, Claims Court Number 90-1270 V
- Byrnie Hardin, Louisville, Georgia, Claims Court Number 90-1271 V
- Darlene Rabon on behalf of Michelle Rabon, Aiken, South Carolina, Claims Court Number 90-1272 V
- Louis Costanza on behalf of Erica Costanza, Flushing, New York, Claims Court Number 90-1273 V
- Rita Collins on behalf of Quentin D. Shaw, Hampton, South Carolina, Claims Court Number 90-1274 V
- Marie Jerome on behalf of Scott Jerome, Augusta, Georgia, Claims Court Number 90-1275 V
- Teresa McArthur on behalf of James A. McArthur, II, Augusta, Georgia, Claims Court Number 90-1276 V
- Cynthia Day on behalf of Natalie Day, Deceased, Augusta, Georgia, Claims Court Number 90-1277 V
- Marie Milligan on behalf of Veda Milligan, Hartselle, Alabama, Claims Court Number 90-1278 V
- Daisy Wilson on behalf of Morrow Wilson, Walterboro, South Carolina, Claims Court Number 90-1279 V
- Linda Jacob on behalf of Henry Jacob, Augusta, Georgia, Claims Court Number 90-1280 V
- Katheryn Vandenbulcke on behalf of Lisa Vandenbulcke, Thomson, Georgia, Claims Court Number 90-1281 V
- Annie Leapheart on behalf of Yvette Leapheart, Deceased, Columbia, South Carolina, Claims Court Number 90-1282 V
- Karen Matthews on behalf of Jason Lee Matthews, Florence, South Carolina, Claims Court Number 90-1283 V
- H. Bruce Hulse on behalf of Crystal Smothers, Deceased, Goldsboro, North Carolina, Claims Court Number 90-1284 V
- Cathy K. Jeffers on behalf of Seth Jeffers, Statesboro, Georgia, Claims Court Number 90-1285 V
- Debra Thomas on behalf of Kaylee Rayburn, Rome, Georgia, Claims Court Number 90-1286 V
- Sharon Freeman on behalf of William Frost, Augusta, Georgia, Claims Court Number 90-1287 V
- Gilbert and Barbara Pleczynski on behalf of Jason Pleczynski, Cherry Hill, New Jersey, Claims Court Number 90-1288 V
- Stephen Kreisher, Baltimore, Maryland, Claims Court Number 90-1289 V
- Edwin and Helen Fell on behalf of Helen Fell, Bayshore, New York, Claims Court Number 90-1290 V
- Frances Baylies on behalf of Mallory Andrews, Culpeper, Virginia, Claims Court Number 90-1291 V
- Loren and Karen Trunk on behalf of Barry Trunk, Princeton, Minnesota, Claims Court Number 90-1292 V
- Morris and Stephanie Morgan on behalf of Jared Morgan, Arlington, Texas, Claims Court Number 90-1294 V
- Alvin and Sandra Curtis on behalf of Natalie Curtis, Deceased, Ogden, Utah, Claims Court Number 90-1295 V
- Jerry Wyman and Kimberly Herrmann on behalf of Courtney Herrmann, Indianapolis, Indiana, Claims Court Number 90-1296 V
- Betsy Bricker on behalf of Eric Bricker, Lansing, Michigan, Claims Court Number 90-1297 V
- Wanda Poole on behalf of Melonie Poole, Ruston, Louisiana, Claims Court Number 90-1298 V
- Karen Peischl on behalf of Jeffrey Peischl, Emmaus, Pennsylvania, Claims Court Number 90-1299 V
- Joan P. Fegan on behalf of Allison M. Fegan, Washington, District of Columbia, Claims Court Number 90-1300 V
- Dean and Barbara Hubert on behalf of Kimberly Hubert, Deceased, Waukegan, Illinois, Claims Court Number 90-1301 V
- Janet Egan on behalf of Tara Egan, Spring Lake, New Jersey, Claims Court Number 90-1302 V
- Robert and Diane Woodard on behalf of Kerri Woodard, Toledo, Ohio, Claims Court Number 90-1303 V
- Berta Salceda on behalf of Maria Salceda, Hayward, California, Claims Court Number 90-1304 V
- Sandra Werner on behalf of Brian Werner, Muskegon, Michigan, Claims Court Number 90-1305 V
- Linda Lewis on behalf of Porscha Lewis, Detroit, Michigan, Claims Court Number 90-1306 V
- Faye Mitchell on behalf of Marcus Mitchell, Many, Louisiana, Claims Court Number 90-1307 V
- Margy Anderson on behalf of Jacinta Anderson, Washtenaw County, Michigan, Claims Court Number 90-1308 V
- Charlotte B. Orange on behalf of Derek Benker, Knoxville, Tennessee, Claims Court Number 90-1309 V

59. Mark and Christine Thompson on behalf of Rachel C. Thompson, Mora, Minnesota, Claims Court Number 90-1310 V
60. Troy and Nancy Sherrill on behalf of Brian Sherrill, Statesville, North Carolina, Claims Court Number 90-1311 V
61. Ilene Thomas on behalf of James Thomas, Clackamas, Oregon, Claims Court Number 90-1312 V
62. Ben and Penny Prichard on behalf of Nicole Prichard, Peoria, Illinois, Claims Court Number 90-1313 V
63. Eugene and Jane Pauly on behalf of Diane Pauly, Moline, Illinois, Claims Court Number 90-1314 V
64. Margaret Nichols on behalf of Elishama Nichols, Chicago, Illinois, Claims Court Number 90-1315 V
65. John Watson on behalf of H. Robbin Watson, Florence, South Carolina, Claims Court Number 90-1316 V
66. Steve and Susan Klover on behalf of Kellie Klover, Mason City, Iowa, Claims Court Number 90-1317 V
67. Matthew and Kathleen Braccio on behalf of Jonathan Braccio, Haddonfield, New Jersey, Claims Court Number 90-1318 V
68. Timothy and Suzanne Hurst on behalf of Kristen Hurst, Erie, Pennsylvania, Claims Court Number 90-1319 V
69. Sally Folsom, Manchester, Iowa, Claims Court Number 90-1320 V
70. Dennis and Jacqueline Engebretson on behalf of Maria Engebretson, Bagley, Minnesota, Claims Court Number 90-1321 V
71. David and Lynn Williams on behalf of Robert Williams, Eugene, Oregon, Claims Court Number 90-1322 V
72. Jacinda Holt on behalf of Antoinette Holt, Mobile, Alabama, Claims Court Number 90-1323 V
73. Richard and Cheryl Parr on behalf of Vanessa Parr, Orange, California, Claims Court Number 90-1324 V
74. Paul and Betty Taylor on behalf of Jeffrey Taylor, Mansfield, Louisiana, Claims Court Number 90-1325 V
75. Madonna Monley on behalf of Sharon Monley, Deceased, Ypsilanti, Michigan, Claims Court Number 90-1326 V
76. Seletha Mitchell on behalf of Amanda Sweet, Many, Louisiana, Claims Court Number 90-1327 V
77. John and Terri Gordon on behalf of Rhett Gordon, Bellevue, Washington, Claims Court Number 90-1328 V
78. Howard F. Kresta on behalf of Melonie Kresta, Wharton, Texas, Claims Court Number 90-1329 V
79. Dorothy Ball on behalf of Janice Ball, Pekin, Illinois, Claims Court Number 90-1330 V
80. Donald and Lucy Matthews on behalf of Danielle Matthews, Branford, Connecticut, Claims Court Number 90-1331 V
81. David Hammontree, Richmond, Indiana, Claims Court Number 90-1332 V
82. Richard and Mary Kaup on behalf of Brian Kaup, Casper, Wyoming, Claims Court Number 90-1333 V
83. John and Ruth Anne Hanlon on behalf of Michael Hanlon, Galesburg, Illinois, Claims Court Number 90-1334 V
84. John and Wilma Hulbert on behalf of Trevor Hulbert, Minneapolis, Minnesota, Claims Court Number 90-1335 V
85. Daniel and Mary Resciniti on behalf of Leo Resciniti, Binghamton, New York, Claims Court Number 90-1336 V
86. Daniel and Mary Resciniti on behalf of Anthony Resciniti, Binghamton, New York, Claims Court Number 90-1337 V
87. Susan A. Beck, South Fork, Pennsylvania, Claims Court Number 90-1338 V
88. William and Beverly Devereaux on behalf of Ryan Devereaux, St. Charles, Illinois, Claims Court Number 90-1339 V
89. Lawrence and Faith Ustonofski on behalf of Jamie Ustonofski, Hazleton, Pennsylvania, Claims Court Number 90-1340 V
90. Charles and Pepper Peterson on behalf of Marie Peterson, Deceased, West Palm Beach, Florida, Claims Court Number 90-1341 V
91. Kim and Denise Judd on behalf of Bronson K. Judd, Deceased, American Fork, Utah, Claims Court Number 90-1342 V
92. John and Winifred Lett on behalf of Diane Lett, Whittier, California, Claims Court Number 90-1343 V
93. Peter and Vickie Reitz on behalf of Derrick Reitz, Monroville, Pennsylvania, Claims Court Number 90-1344 V
94. Margaret Lary on behalf of Julia Lary, Bangor, Maine, Claims Court Number 90-1345 V
95. Tirlok Kakar on behalf of Dev Kakar, Lansing, Michigan, Claims Court Number 90-1346 V
96. Betsy Goodwin on behalf of Markus Goodwin, Columbia, Tennessee, Claims Court Number 90-1347 V
97. Sen Dipasri on behalf of Treena Dipasri, New London, Connecticut, Claims Court Number 90-1348 V
98. Jack and Janet Duncan on behalf of Robert Duncan, II, Deceased, Arlington, Texas, Claims Court Number 90-1349 V
99. Eunice Bell on behalf of Karen D. Bell, Cleveland, Tennessee, Claims Court Number 90-1350 V
100. Janie Black on behalf of Kimberly Black, Murfreesboro, Tennessee, Claims Court Number 90-1351 V
101. Maureen Pulliam on behalf of Timothy Pulliam, Lapeer, Michigan, Claims Court Number 90-1352 V
102. Clifford McKillop on behalf of Craig McKillop, Royal Oak, Michigan, Claims Court Number 90-1353 V
103. Christina Firman on behalf of Christopher Firman, Flint, Michigan, Claims Court Number 90-1354 V
104. Ardys Growette on behalf of Debra Growette, International Falls, Minnesota, Claims Court Number 90-1355 V
105. John and Shirley Larson on behalf of Mark Larson, Sioux City, South Dakota, Claims Court Number 90-1357 V
106. Robert and Yvonne Lampela on behalf of Michelle Lampela, Pontiac, Michigan, Claims Court Number 90-1358 V
107. Mary Gordon on behalf of Joni Gordon, Denver, Colorado, Claims Court Number 90-1359 V
108. Diane M. Burr on behalf of Jeremiah Burr, Hahn, West Germany, Claims Court Number 90-1360 V
109. Julia A. Chapman on behalf of Katrina Ann Chapman, Owensboro, Kentucky, Claims Court Number 90-1361 V
110. Beata B. Anderson, West Brookfield, Massachusetts, Claims Court Number 90-1362 V
111. Carmel Bossard on behalf of Lane Bossard, Rochester, New York, Claims Court Number 90-1363 V
112. Victor Vegas, Tampa, Florida, Claims Court Number 90-1364 V
113. Artemis Buccci on behalf of Leonard Buccci, Saco, Maine, Claims Court Number 90-1365 V
114. Leo Jarvis on behalf of Michael Jarvis, Springfield, Illinois, Claims Court Number 90-1366 V
115. Joy Niemiera on behalf of Kristen Niemiera, Princeton, New Jersey, Claims Court Number 90-1367 V
116. Robert E. Johnson, Vincennes, Indiana, Claims Court Number 90-1368 V
117. Marlene Pijanowski on behalf of Joel Johnson, Scott Air Force Base, Illinois, Claims Court Number 90-1369 V
118. Nicki Cosper on behalf of Ottie Jo Cosper, Frazier Park, California, Claims Court Number 90-1370 and 90-1364 V
119. Adam and Jeanette Shemezis on behalf of Paula M. Shemezis, Chicago, Illinois, Claims Court Number 90-1371 V
120. Linda C. Cobb, Urbana, Illinois, Claims Court Number 90-1372 V
121. Gerhard and Eva Schneider on behalf of Michael Schneider, Sunnyvale, California, Claims Court Number 90-1374 V
122. Carole Kelly on behalf of Stephanie Kelly, South Bend, Indiana, Claims Court Number 90-1375 V
123. Daisy Nelson on behalf of Richard Nelson, Coos Bay, Oregon, Claims Court Number 90-1376 V
124. Wendy Kranz on behalf of Lindsay Kranz, Riverside, California, Claims Court Number 90-1377 V
125. Marilyn Nation on behalf of Nicholas Nation, Louisville, Kentucky, Claims Court Number 90-1378 V
126. James Evans on behalf of Anna Evans, Jacksonville, Florida, Claims Court Number 90-1379 V
127. Allan Brough on behalf of Michelle Brough, Lodi, California, Claims Court Number 90-1380 V
128. Gustave and Gale Reininger on behalf of Anthea Reininger, Deceased, Santa Monica, California, Claims Court Number 90-1381 V
129. Leonard and Roxanne Riotto on behalf of Nicole Riotto, Bangor, Pennsylvania, Claims Court Number 90-1382 V
130. Rudolph and Rosemarie Younger on behalf of Kimberly Younger, Allentown, Pennsylvania, Claims Court Number 90-1383 V
131. Tony and Ronna Dicus on behalf of Kassandra Dicus, Sioux City, Iowa, Claims Court Number 90-1385 V

132. John and Debbie Knox on behalf of Ami Knox, Alexandria, Louisiana, Claims Court Number 90-1387 V
 133. Kimberly A. Gibson on behalf of Amy M. Sprague, Charleston, West Virginia, Claims Court Number 90-1388 V
 134. Carol Benson-Chichester, Marietta, Ohio, Claims Court Number 90-1389 V
 135. Debra Marlowe, Summersville, West Virginia, Claims Court Number 90-1390 V
 136. Margaret Berry on behalf of Richard Harvey, Wichita, Kansas, Claims Court Number 90-1391 V
 137. Rita S. Black, Trenton, Tennessee, Claims Court Number 90-1392 V
 138. Russell and Paula Goines on behalf of John Goines, Kingwood, West Virginia, Claims Court Number 90-1393 V
 139. Tina Olmstead on behalf of Kristopher Olmstead, Ft. Belvoir, Virginia, Claims Court Number 90-1394 V
 140. Raymond and Linda Martin on behalf of Christine Martin, Monterey, California, Claims Court Number 90-1395 V
 141. Richard and Gloria Garbutt on behalf of Lucas Garbutt, Klamath Falls, Oregon, Claims Court Number 90-1396 V
 142. Paula Little on behalf of Heather Little, Howell, Michigan, Claims Court Number 90-1397 V
 143. Calvin and Bonnie Walker on behalf of Sara Walker, Caldwell, Idaho, Claims Court Number 90-1398 V
 144. Grant Gravitt on behalf of Katherine Gravitt, Miami Beach, Florida, Claims Court Number 90-1399 V
 145. Samuel and Judith Lowry on behalf of Walter Lowry, Michigan, Indiana, Claims Court Number 90-1400 V
 146. Wesley and Rebecca Groff on behalf of Mattie Groff, Deceased, Des Moines, Iowa, Claims Court Number 90-1401 V
 147. Ottomar and Paula Krueger on behalf of Elizabeth Krueger, North Miami, Florida, Claims Court Number 90-1402 V
 148. Anna L. Zembo Fisher, Elizabeth, New Jersey, Claims Court Number 90-1403 V
 149. John and Louise Zembo on behalf of Anna Zembo, Elizabeth, New Jersey, Claims Court Number 90-1404 V
 150. Gary E. Carpenter, Paducah, Kentucky, Claims Court Number 90-1405 V
 151. Darlene Seau on behalf of Shawkey Seau, Bamberg, Germany, Claims Court Number 90-1406 V
 152. William and Florrie Steele on behalf of Mary K. Steele, Deceased, Scranton, Pennsylvania, Claims Court Number 90-1407 V
 153. Cynthia Enfield on behalf of Dwayne Weis, Austin, Minnesota, Claims Court Number 90-1408 V
 154. John and Dolores Stupca on behalf of Connie A. Stupca, Gilbert, Minnesota, Claims Court Number 90-1409 V
 155. Darrell and Linda Drentlaw on behalf of Jennifer Drentlaw, San Diego, California, Claims Court Number 90-1410 V
 156. James and Nancy Poston on behalf of Rachel C. Poston, Columbia, South Carolina, Claims Court Number 90-1411 V
 157. Rory and Maureen Strange on behalf of Calla Strange, Duluth, Minnesota, Claims Court Number 90-1412 V
 158. John Sengia on behalf of Rachel Sengia, Pottstown, Pennsylvania, Claims Court Number 90-1413 V
 159. Cheri Jane Melgard, Salem, Oregon, Claims Court Number 90-1414 V
 160. Douglas A. Wilmsmeyer, Evansville, Indiana, Claims Court Number 90-1415 V
 161. Burnadett Langford, Boston, Massachusetts, Claims Court Number 90-1416 V
 162. Mark and Lisa Addlespurger on behalf of Joshua Addlespurger, Long Beach, California, Claims Court Number 90-1417 V
 163. John Thompson, Sr., on behalf of John Thompson, Jr., Cheboygan, Michigan, Claims Court Number 90-1418 V
 164. Eileen Caba on behalf of Celia Caba, Red Bank, New Jersey, Claims Court Number 90-1419 V
 165. Steve and Terri Hearrell on behalf of Kristen Hearrell, Topeka, Kansas, Claims Court Number 90-1420 V
 166. Ellen Adrian on behalf of Corey Adrian, Lancaster, Wisconsin, Claims Court Number 90-1421 V
 167. Steve and Dianna Garcia on behalf of Tabatha Garcia, Odessa, Texas, Claims Court Number 90-1422 V
 168. Arthur and Margaret Romano on behalf of Sean Romano, North Haven, Connecticut, Claims Court Number 90-1423 V
 169. Arthur and Kathryn Ellis on behalf of Shannon Ellis, Portland, Maine, Claims Court Number 90-1424 V
 170. Curtis and Anita Johnson on behalf of Kenya N. Johnson, Memphis, Tennessee, Claims Court Number 90-1425 V
 171. Nancy Walker on behalf of Shannon Williams, Deceased, Manhattan Beach, California, Claims Court Number 90-1426 V
 172. Lois Mack on behalf of Penny Mack, Shreveport, Louisiana, Claims Court Number 90-1427 V
- Dated: March 4, 1991.
Robert G. Harmon,
Administrator.
 [FR Doc. 91-5581 Filed 3-7-91; 8:45 am]
 BILLING CODE 4160-15-M

Office of Community Services

[Program Announcement No. OCS-OEA-91-1]

State Median Income Estimates; Announcement of the Fiscal Year (FY) 1992 State Median Income Estimates for Use Under the Office of Community Services, Office of Energy Assistance

AGENCY: Office of Energy Assistance, OCS, FSA.

ACTION: Announcement of estimated state median income for Fiscal Year (FY) 1992.

SUMMARY: This notice announces the estimated median income for four-person families in each state and the

District of Columbia for FY 1992. This listing of estimated state median income concerns maximum income levels for households to which the states may make payments under the Low Income Home Energy Assistance Program (LIHEAP).

EFFECTIVE DATE: The estimates are effective as of October 1, 1991.

FOR FURTHER INFORMATION CONTACT: Leon Litow, Family Support Administration, Office of Community Services, Office of Energy Assistance, 5th Floor West, 370 L'Enfant Promenade, SW, Washington, DC 20447, telephone: (202) 401-5304.

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(7) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35, as amended), we are announcing the estimated median income of a four-person family for each state, the District of Columbia, and the United States for the period of October 1, 1991, through September 30, 1992. Section 2605(b)(2)(B)(ii) of the statute provides that 60 percent of the median income for each state, as annually established by the Secretary of Health and Human Services, is one of the income criteria that states can use in determining a household's eligibility for LIHEAP. The purpose of this announcement is to provide estimates of state median income for use in FY 1992.

LIHEAP is currently authorized through the end of FY 1994 by provisions of title VII of the Augustus F. Hawkins Human Services Reauthorization Act of 1990, Public Law 101-501, enacted on November 3, 1990. Under this Act, the current income eligibility provisions relating to state median income remain unchanged.

Estimates of the median income of four-person families for each state and the District of Columbia for FY 1992 were developed by the Bureau of the Census, using the most recent available income data. In developing the median income estimates for FY 1992, the Bureau of the Census used the following three sources of data: (1) The March 1990 Current Population Survey; (2) the 1980 Census of Population; and (3) 1989 per capita personal income estimates, by State, from the Bureau of Economic Analysis.

The estimating method for FY 1992 is similar to that used in previous years. Beginning with the estimating method for FY 1987, Current Population Survey sample estimates for three- and five-person families and their statistical relationships to four-person family medians are now used in addition to the

Current Population Survey sample estimates of four-person family medians already in use. For further information, contact Chuck Nelson, Chief of Income Statistics Branch, at the Bureau of the Census (301-763-8576).

A state-by-state listing of median income, and 60 percent of median income, for a four-person family for FY 1992 follows. The listing describes the method for adjusting median income for families of different sizes as specified in 45 CFR 96.85(b), which was published in the Federal Register on March 3, 1988 at 53 FR 6824.

Dated: February 28, 1991.

Eunice S. Thomas,

Director, Office of Community Services.

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, BY STATE, FISCAL YEAR 1992^{1 2}

States	Estimated State median income 4-person families	60 Percent of estimated State median income 4-person families
Alabama.....	\$34,930	\$20,958
Alaska.....	48,411	29,047
Arizona.....	38,347	23,008
Arkansas.....	31,853	19,112
California.....	42,813	25,688
Colorado.....	40,265	24,159
Connecticut.....	53,313	31,988
Delaware.....	42,790	25,674
District of Col.....	40,574	24,344
Florida.....	37,398	22,439
Georgia.....	40,019	24,011
Hawaii.....	44,988	26,993
Idaho.....	33,633	20,180
Illinois.....	42,609	25,565
Indiana.....	38,201	22,921
Iowa.....	36,736	22,042
Kansas.....	37,938	22,763
Kentucky.....	34,390	20,634
Louisiana.....	34,406	20,644
Maine.....	38,336	23,002
Maryland.....	50,145	30,087
Massachusetts.....	51,799	31,079
Michigan.....	42,825	25,695
Minnesota.....	42,365	25,419
Mississippi.....	32,300	19,380
Missouri.....	38,478	23,087
Montana.....	33,882	20,329

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, BY STATE, FISCAL YEAR 1992^{1 2}—Continued

States	Estimated State median income 4-person families	60 Percent of estimated State median income 4-person families
Nebraska.....	37,902	22,741
Nevada.....	39,737	23,842
New Hampshire.....	47,983	28,790
New Jersey.....	53,229	31,937
New Mexico.....	31,156	18,694
New York.....	43,693	26,216
North Carolina.....	38,068	22,841
North Dakota.....	34,806	20,884
Ohio.....	41,469	24,881
Oklahoma.....	34,470	20,682
Oregon.....	38,723	23,234
Pennsylvania.....	40,404	24,242
Rhode Island.....	43,278	25,967
South Carolina.....	36,113	21,668
South Dakota.....	32,829	19,697
Tennessee.....	34,882	20,929
Texas.....	34,978	20,987
Utah.....	36,562	21,937
Vermont.....	40,397	24,238
Virginia.....	45,090	27,054
Washington.....	41,728	25,037
West Virginia.....	31,811	19,087
Wisconsin.....	40,557	24,334
Wyoming.....	35,620	21,372

Note: The estimated median income for 4-person families living in the United States is \$40,763 for the period of October 1, 1991, through September 30, 1992.

¹ In accordance with 45 CFR 96.85, each state's estimated median income for a 4-person family is multiplied by the following percentages to adjust for family size: 52% for one person, 68% for two persons, 84% for three persons, 100% for four persons, 116% for five persons, and 132% for six persons. For family sizes greater than six persons, add 3% to 132% for each additional family member and multiply the new percentage by the state's dollar amount for 4-person families.

² Prepared by the Bureau of the Census from the March 1990 Current Population Survey, 1980 Census of Population and Housing, and 1989 per capita personal income estimates, by state, from the Bureau of Economic Analysis.

[FR Doc. 91-5451 Filed 3-7-91; 8:45 am]

BILLING CODE 4150-04-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, March 1, 1991. (Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. Evaluation of NIH/NASA High School Curriculum Supplement, "Human Physiology in Space: A Program for America"—0925-0360—Initial evaluation indicates the program was successful. However, limitations in the data were recognized at the time of the initial evaluation and response rates were lower than expected. A modification to include the collection of additional data to supplement earlier findings and the inclusion of a brief pre-test for students is being requested to improve the data which the sponsoring Federal Agencies will use to make a decision regarding the future of this program. *Respondents:* Individuals or households; *Number of Respondents:* 2,545; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .34 hours; *Estimated Annual Burden:* 859 hours.

2. Portable Self-Recording Flow-Meter in the Investigation of Occupational Airways Disorders—NEW—NIOSH is currently developing a portable self-recording flow meter which may offer important advantages in the investigation of occupational asthma and acutely toxic or irritating environments. This request will permit NIOSH to investigate the accuracy and reproducibility of this device in the laboratory and field settings. *Respondents:* Individuals or households.

	No. of respondents	No. of hours per response	No. of responses per respondent
Phases 1-5.....	170	1.77	2.33
Screening.....	20	.10	1

Estimated Annual Burden: 720 hours.

3. Common Reporting Requirements for Urban Indian Health Program—0917-0007—Congress has mandated that standard reporting requirements be established for Urban Indian Health Program. Data collected are used to

monitor contracts, to prepare reports to Congress, and for program evaluation, program planning and to establish program performance indicators.

Respondents: Non-profit institutions; *Number of Respondents:* 34; *Number of Responses per Respondents:* 2; *Average*

Burden per Response: 9.42 hours; *Estimated Annual Burden:* 840 hours.

4. National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners (45 CFR part 60)—0915-0126—Data identifying incompetent, unprofessional, and

unethical physicians and health practitioners will be shared with licensing boards, professional societies, and selected health care providers. These data will be used to maintain and

improve health care and will be obtained from insurers, licensure boards, peer review committees, hospitals and other providers. *Respondents:* Individuals or households,

State or local governments, businesses or other for-profit, Federal agencies or employees, non-profit institutions, small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Correction of Errors & Omissions Sec. 60.6(a)	500	.25	1-4
Revisions to Report Actions Sec. 60.6(b)	2,825	.25	1-4
Rptg Medical Malpractice Payments 60.7(b)	1,800	.50	20-30
Licensure Actions by Boards of Medical Examiners Sec. 60.8(b)	125	.50	25-40
Adverse Actions on Clinical Privileges Sec. 60.9(a)(3)	5,000	.50	1-2
Rptg by Boards to the Nat'l Data Bank Sec. 60.9(b)	125	.083	50-80
Hearings for Hlth Care Entities Found in Non-compliance Sec. 60.9(c)	10	8	1
Hospital Requests for Info on Applicants Sec. 60.10(a)(1)	7,200	.083	15-20
Hospital Requests for Info on Current Staff Sec. 60.10(a)(2)	8,000	1.76	4-7
Disclosure to Hospitals Sec. 60.11(a)(1)	50	.083	1
Disclosure to Individuals Sec. 60.11(a)(2)	138,000	.25	1
Disclosure to Licensure Boards Sec. 60.11(a)(3)	125	.083	948
Disclosure to Non-Hospital Entities for Hiring Purposes Sec. 60.11(a)(4)	19,000	.083	4
Disclosure to Attorneys & Others Sec. 60.11(a)(5)	1,000	.25	4-5
Disclosure to Hlth Care Entities for Peer Review Sec. 60.11(a)(6)	2,500	.25	1
Disclosure of Aggregate Data to Researchers Sec. 60.11(a)(7)	100	.33	1
Procedures for Filing a Dispute Sec. 60.14(b)	600	1	1
Identification & Authorization of Agents	1,440	.25	1

Estimated Annual Burden: 152,339 hours.

5. National Longitudinal Alcohol Epidemiologic Survey (NLAES): 1991-1992 Wave 1-NEW-The National Institute on Alcohol Abuse and Alcoholism (NIAAA) needs information to address administrative and legal mandates of the Anti-Drug Abuse Act of 1988 and Year 200 Health Objectives. This longitudinal survey of non-institutionalized individuals will provide reliable national estimates of the incidence and prevalence of alcohol use disorders, their associated disabilities, and treatment utilization. *Respondents:* Individuals or households; *Number of Respondents:* 50,000; *Number of Responses per Respondents:* 1; *Average Burden per Response:* 1 hour; *Estimated Annual Burden:* 50,000 hours.

OMB desk officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: March 4, 1991.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 91-5479 Filed 3-7-91; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-16]

Federal Property Suitable as Facilities To Assist Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: March 8, 1991.

ADDRESS: For further information, contact James Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD is publishing this Notice to identify Federal buildings and real property that HUD has determined are

suitable for use for facilities to assist the homeless. The properties were identified from information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property.

The Order requires HUD to take certain steps to implement section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), which sets out a process by which unutilized or underutilized Federal properties may be made available to the homeless. Under section 501(a), HUD is to collect information from Federal landholding agencies about such properties and then to determine, under criteria developed in consultation with the Department of Health and Human Services (HHS) and the Administrator of General Services (GSA), which of those properties are suitable for facilities to assist the homeless. The Order requires HUD to publish, on a weekly basis, a Notice in the *Federal Register* identifying the properties determine as suitable.

All properties in today's Notice, with the exception of the Department of Transportation property, were published during 1990, and are being republished as part of HUD's complete resurvey of Federal landholding agencies. The properties identified in this Notice have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to declare the property excess to the agency's need or to make the property

available on an interim basis for use as facilities to assist the homeless; or (2) a statement of the reasons that the property cannot be declared excess or made available on an interim basis for use as facilities to assist the homeless.

First, if the landholding agency decides that the property cannot be declared excess or made available to the homeless for use on an interim basis the property will no longer be available.

Second, if the landholding agency declares the property excess to the agency's need, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law and the December 12, 1988 Order and December 14, 1988 Memorandum, subject to screening for other Federal use.

Homeless assistance providers interested in any property identified as suitable and available in this Notice should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit such written expressions of interest within 60 days from the date of this Notice. For complete details concerning the timing and processing of applications, the reader is encouraged to refer to HUD's Federal Register Notice on June 23, 1989 (54 FR 26421), as corrected on July 3, 1989 (54 FR 27975).

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067; Dept. of Interior: Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW., Mailstop 5512-MIB, Washington, DC 20240; (202) 208-4080; Veterans Administration: Linda Tribby, Management Analyst, Dept. of Veterans Affairs, Room 717, 810 Vermont Ave. NW., Washington, DC 20420; (202) 233-5026; Dept. of Commerce: Jim McCombs, Office of Federal Property Programs, room 1037, 14th St. and Constitution Ave. NW., Washington, DC 20230; (202) 377-3580; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000

Independence Ave. SW., Washington, DC 20585; (202) 586-1191; Dept. of Transportation: Angelo Picillo, Deputy Director, Administrative Services & Property Management, DOT, 400 Seventh St. SW., room 10317, Washington, DC 20590; (202) 366-5601. (These are not toll-free numbers.)

Dated: March 1, 1991.

Paul Roitman Bardack,
Deputy Assistant Secretary for Economic Development.

[FR Doc. 91-5341 Filed 3-7-91; 8:45 am]

BILLING CODE 4210-29-M

Suitable/Available Properties

Alaska, Suitable Land (by Agency)

Commerce

Gibson Cove

1211 Gibson Cove Road
Kodiak, AK Co: Kodiak Island 99615

Federal Register notice date: 03/08/91

Property number: 279010002

Status: Excess

Base closure: No

Comment: 7.44 acres; small rock peninsula; most recent use—windbreak for cove.

Alabama, Suitable Land (by Agency)

VA

VA Medical Center

VAMC

Tuskegee, AL Co: Macon 36083

Federal Register notice date: 03/08/91

Property number: 979010053

Status: Underutilized

Base closure: No

Comment: 40 acres; buffer to VA Medical Center; potential utilities; underdeveloped.

Colorado, Suitable Land (by Agency)

VA

VA Medical Center

Fort Lyon, CO Co: Bent 81038

Location: 6 miles east of Las Animas, Co. and then 1 mile south on Colorado highway 183.

Federal Register notice date: 03/08/91

Property number: 979010021

Status: Underutilized

Base closure: No

Comment: 183.5 acres; most recent use—potable water well and static area; no utilities; secured area with alternative access.

Idaho, Suitable Buildings (by Agency)

Energy

Storage and Training Facility

INEL DOE-ID

Idaho Falls, ID Co: Bonneville

Federal Register notice date: 03/08/91

Property number: 419040001

Status: Excess

Base closure: No

Comment: 2,072 sq. ft.; 1 story wood frame; needs major rehab; off-site use only.

Illinois, Suitable Land (by Agency)

Commerce

National Weather Service
Meteorological Observatory
Leckrone Airport

Salem, IL Co: Marion 62881

Federal Register notice date: 03/08/91

Property number: 279010005

Status: Excess

Base closure: No

Comment: 8.3 acres with weather observation buildings, portion in airport runway zone.

Louisiana, Suitable Land (by Agency)

VA

Land—8.27 acres

VA Medical Center

2501 Shreveport Highway

Alexandria, LA Co: Rapides 71301

Federal Register notice date: 03/08/91

Property number: 979010009

Status: Unutilized

Base closure: No

Comment: 8.27 acres; heavily wooded with natural drainage ravine across property; most recent use—recreation/buffer area.

Maryland, Suitable Land (by Agency)

VA

VA Medical Center

9600 North Point Road

Fort Howard, MD Co: Baltimore 21052

Federal Register notice date: 03/08/91

Property number: 979010020

Status: Underutilized

Base closure: No

Comment: Approximately 10 acres; wetland and periodically floods; most recent use—dump site for leaves.

Minnesota, Suitable Land (by Agency)

VA

Land around Bldg. 240-249, 253

VA Medical Center

Fort Snelling

St. Paul, MN Co: Hennepin 55111

Federal Register notice date: 03/08/91

Property number: 979010007

Status: Underutilized

Base closure: No

Comment: 3.76 acres; potential utilities.

Missouri, Suitable Land (by Agency)

VA

Jefferson Barracks Division

VA Medical Center

I-255 and Koch Road

St. Louis, Mo Co: St. Louis 63125

Federal Register notice date: 03/08/91

Property number: 979010078

Status: Underutilized

Base closure: No

Comment: 4 acres; has sink holes and property borders ridge above Mississippi River.

North Dakota, Suitable Land (by Agency)

VA

Land

VA Medical Center

12th St. and 9th Avenue NW.

Minot, ND Co: Ward 58701

Federal Register notice date: 03/08/91

Property number: 979010072

Status: Underutilized

Base closure: No

Comment: 20.6 acres; partially paved roads and packing lot.

*Suitable Buildings (by Agency)***Bldg. 1**

VA. Medical Center
12th St. and 9th Avenue, NW.
Minot, ND Co: Ward 58701
Federal Register notice date: 03/08/91
Property number: 979010057
Status: Underutilized
Base closure: No
Comment: 9 story concrete frame; asbestos present on pipes; needs rehab.

Bldg. 2

VA. Medical Center
12th St. and 9th Avenue, NW.
Minot, ND Co: Ward 58701
Federal Register notice date: 03/08/91
Property number: 979010058
Status: Underutilized
Base closure: No
Comment: 2672 sq. ft.; 2 story wood frame; asbestos present on pipes.

Bldg. 3

VA. Medical Center
12th St. and 9th Avenue, NW.
Minot, ND Co: Ward 58701
Federal Register notice date: 03/08/91
Property number: 979010059
Status: Underutilized
Base closure: No
Comment: 2508 sq. ft.; 3 story wood frame; asbestos present on pipes; needs rehab.

Bldg. 4

VA. Medical Center
12th St. and 9th Avenue, NW.
Minot, ND Co: Ward 58701
Federal Register notice date: 03/08/91
Property number: 979010060
Status: Underutilized
Base closure: No
Comment: 2520 sq. ft.; 1 story wood frame; asbestos present on pipes.

Bldg. 5

VA. Medical Center
12th St. and 9th Avenue, NW.
Minot, ND Co: Ward 58701
Federal Register notice date: 03/08/91
Property number: 979010061
Status: Underutilized
Base closure: No
Comment: 7184 sq. ft.; 1 story wood frame; asbestos present on pipes; needs rehab.

Bldg. 6

VA. Medical Center
12th St. and 9th Avenue, NW.
Minot, ND Co: Ward 58701
Federal Register notice date: 03/08/91
Property number: 979010062
Status: Underutilized
Base closure: No
Comment: 7832 sq. ft.; 2 story concrete block; asbestos present on pipes.

Bldg. 7

VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND Co: Ward 58701
Federal Register Notice Date: 03/08/91
Property number: 979010063
Status: Unutilized
Base closure: No
Comment: 3780 sq. ft.; 1 story brick frame; asbestos present on pipes; most recent use—supply warehouse.

Bldg. 8

VA. Medical Center,

12th St. and 9th Avenue, NW.,
Minot, ND Co: Ward 58701
Federal Register Notice Date: 03/08/91
Property number: 979010064
Status: Unutilized

Base closure: No
Comment: 2709 sq. ft.; 1 story brick frame; asbestos present on pipes; most recent use—vehicle garage; needs rehab.

Bldg. 12

VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND Co: Ward 58701
Federal Register Notice Date: 03/08/91
Property number: 979010065
Status: Unutilized
Base closure: No
Comment: 1350 sq. ft.; 1 story brick frame; asbestos present on pipes; most recent use—maintenance shop.

Bldg. 16

VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND Co: Ward 58701
Federal Register Notice Date: 03/08/91
Property number: 979010066
Status: Unutilized
Base closure: No
Comment: 742 sq. ft.; 1 story wood frame; limited utilities; most recent use—vehicle garage.

Bldg. 17

VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND Co: Ward 58701
Federal Register Notice Date: 03/08/91
Property number: 979010067
Status: Unutilized
Base closure: No
Comment: 220 sq. ft.; 1 story wood frame; limited utilities; most recent use—vehicle garage.

Bldg. 19

VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND Co: Ward 58701
Federal Register Notice Date: 03/08/91
Property number: 979010069
Status: Unutilized
Base closure: No
Comment: 2093 sq. ft.; 1 story wood frame; needs rehab; asbestos present on pipes.

Bldg. 20

VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND Co: Ward 58701
Federal Register Notice Date: 03/08/91
Property number: 979010070
Status: Unutilized
Base closure: No
Comment: 742 sq. ft.; 1 story wood frame; limited utilities; most recent use—vehicle garage.

Bldg. 21

VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND Co: Ward 58701
Federal Register Notice Date: 03/08/91
Property number: 979010071
Status: Underutilized
Base closure: No
Comment: 326 sq. ft.; 1 story concrete frame; limited utilities; most recent use—water plant; asbestos present on pipes.

Bldg. 18

VA. Medical Center,
12th St. and 9th Avenue, NW.,
Minot, ND Co: Ward 58701
Federal Register Notice Date: 03/08/91
Property number: 979010068
Status: Unutilized
Base closure: No
Comment: 2093 sq. ft.; 1 story wood frame; needs rehab; asbestos present on pipes.

*New Mexico, Suitable Buildings (by Agency)***Interior**

Old Helium Plant
Gallup, NM Co: McKinley 87301
Location: ¼ mile north of Gallup, adjacent to Old US Highway 666.
Federal Register Notice date: 03/08/91
Property number: 619010002
Status: Excess
Base closure: No
Comment: 7653 sq. ft.; 1 story office and warehouse space; possible asbestos; on 4.65 acres; secured area with alternate access.

*Nevada, Suitable Buildings (by Agency)***GSA**

IHS Health Station
Carson City, NV Co: Carson City 89701
Federal Register Notice date: 03/08/91
Property Number: 579010001
Status: Excess
Base closure: No
Comment: 4882 sq. ft.; 1 story native stone; most recent use—Community Health Office; possible asbestos.
GSA No. 9-F-NV-460-C

*Texas, Suitable Land (by Agency)***VA****Land**

Olin E. Teague Veterans Center
1901 South 1st Street
Temple, TX Co: Bell 76504
Federal Register Notice date: 03/08/91
Property Number: 979010079
Status: Underutilized
Base closure: No
Comment: 13 acres; portion formerly landfill; portion near flammable materials; railroad crosses property; potential utilities.

VA. Medical Center

4800 Memorial Drive
Waco, TX Co: McLennan 76711
Federal Register Notice date: 03/08/91
Property Number: 979010081
Status: Unutilized
Base closure: No
Comment: 2.3 acres; leased to Owens-Illinois Glass Plant; expiration date 10/31/90; most recent use—parking lot.

*Washington, Suitable Buildings (by Agency)***Interior**

Thompson Main Residence
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Federal Register Notice date: 03/08/91
Property Number: 619030001
Status: Unutilized
Base closure: No
Comment: 2 story residence; no utilities; needs rehab; off-site use only.

Thompson Older Residence
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Federal Register Notice date: 03/08/91
Property Number: 619030002
Status: Unutilized
Base closure: No
Comment: 888 sq. ft.; 1 story residence; no utilities; needs rehab; off-site use only.

Thompson Garage
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Federal Register Notice date: 03/08/91
Property Number: 619030003
Status: Unutilized
Base closure: No
Comment: 240 sq. ft.; 1 story garage; no utilities; needs rehab; off-site use only.

Thompson Shop
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Federal Register Notice date: 03/08/91
Property Number: 619030009
Status: Underutilized
Base closure: No
Comment: 399 sq. ft.; 1 story shop; no utilities; needs rehab; off-site use only.

Thompson Power House
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Federal Register notice date: 03/08/91
Property number: 619030010
Status: Unutilized
Base closure: No
Comment: 160 sq. ft.; 1 story powerhouse; no utilities; needs rehab; off-site use only.

Thompson Boathouse
Lake Crescent Ranger Station
HC 62, Box 10
Port Angeles, WA 98362
Federal Register notice date: 03/08/91
Property number: 619030011
Status: Unutilized
Base closure: No
Comment: 693 sq. ft.; 1 story boathouse; no utilities; needs rehab; off-site use only.

Spracklen Utility Shed
Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA 98526
Federal Register notice date: 03/08/91
Property number: 619030012
Status: Unutilized
Base closure: No
Comment: 150 sq. ft.; frame utility shed; limited utilities; off-site use only.

Dahinden Storage Building
Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA 98526
Federal Register notice date: 03/08/91
Property number: 619030013
Status: Unutilized
Base closure: No
Comment: 240 sq. ft.; frame storage building; no utilities; needs rehab; off-site use only.

Bldg. 1185
Lake Crescent Ranger Station HC 62, Box 10
Carter Storage Building
Port Angeles, WA 98362
Federal Register notice date: 03/08/91

Property number: 619030016
Status: Unutilized
Base closure: No
Comment: 92 sq. ft.; 1 story storage building; no utilities; off-site use only.

Haas Barn
% Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA Co: Grays Harbor 98526
Federal Register notice date: 03/08/91
Property number: 619040001
Status: Excess
Base closure: No
Comment: 1408 sq. ft.; 1 story wood frame barn; potential utilities; poor condition; off-site use only.

Haas Shed
% Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA Co: Gray Harbor 98526
Federal Register notice date: 03/08/91
Property number: 619040002
Status: Excess
Base closure: No
Comment: 480 sq. ft.; wood frame shed; poor condition; off-site use only.

Haas Shed
% Quinault Ranger Station
Route 2, box 76
Amanda Park, WA Co: Brays Harbor 98526
Federal Register notice date: 03/08/91
Property number: 619040003
Status: Excess
Base closure: No
Comment: 64 sq. ft.; wood frame shed; poor conditions; off-site use only.

Haas Residence
% Quinault Ranger Station
Route 2, Box 76
Amanda Park, WA Co: Grays Harbor 98526
Federal Register notice date: 03/08/91
Property number: 619040006
Status: Excess
Base closure: No
Comment: 624 sq. ft.; 1 story wood frame residence; potential utilities; poor condition; off-site use only.

Bldg. 1323
Jensen Barn
% Quinault Ranger Station, Route 2, Box 76
Amanda Park, WA Co: Grays Harbor 98526
Federal Register notice date: 03/08/91
Property number: 619040007
Status: Excess
Base closure: No
Comment: 4200 sq. ft.; wood frame barn; most recent use—storage; no utilities; off-site use only.

Wisconsin, Sutable Land (by Agency)
VA
VA Medical Center
County Highway E
Tomah, WI Co: Monroe 54660
Federal Register notice date: 03/08/91
Property number: 979010054
Status: Underutilized
Base closure: No
Comment: 12.4 acres; serves as buffer between center and private property; no utilities.

Suitable Buildings (by Agency)

Bldg. 2
VA Medical Center

County Highway E
Tomah, WI Co: Monroe 54660
Federal Register notice date: 03/08/91
Property number: 979010055
Status: Underutilized
Base closure: No
Comment: 18000 sq. ft.; 3 story masonry; needs rehab; possible asbestos; potential utilities.

Bldg. 8
VA Medical Center
County Highway E
Tomah, WI Co: Monroe 54660
Federal Register notice date: 03/08/91
Property number: 979010056
Status: Underutilized
Base closure: No
Comment: 2200 sq. ft.; 2 story wood frame; possible asbestos; potential utilities; structural deficiencies; needs rehab.

West Virginia, Suitable Land (by Agency) VA

VA Medical Center
1540 Spring Valley Drive
Huntington, WV Co: Wayne 25704
Federal Register notice date: 03/08/91
Property number: 979010022
Status: Unutilized
Base closure: No
Comment: 72 acres; very rough terrain and wooded; potential utilities.

Wyoming, Suitable Land (by Agency)

Energy
Wind Site A
Medicine Bow, WY Co: Carbon 82329
Location: 3 miles south and 2 miles west of Medicine Bow
Federal Register notice date: 03/08/91
Property number: 419030010
Status: Excess
Base closure: No
Comment: 46.75 acres; limitation—easement restrictions.

Suitable Buildings (by Agency)

Interior
Administration Bldg.
Fontenelle Camp
Fontenelle, WY Co: Lincoln
Location: Approximately 24 miles southeast of La Barge, off State Road 372 and on County Road 316
Federal Register notice date: 03/08/91
Property number: 619030017
Status: Excess
Base closure: No
Comment: 4464 sq. ft.; 2 story brick structure with a 2880 sq. ft. wood frame addition; needs rehab; possible asbestos; off-site use only.

Residential House
Fontenelle Camp
Fontenelle, WY Co: Lincoln
Location: Approximately 24 miles southeast of La Barge, off State Road 372 and on County Road 316
Federal Register notice date: 03/08/91
Property number: 619030018
Status: Excess
Base closure: No

Comment: 1200 sq. ft.; 1 story with basement; needs rehab; possible asbestos; off-site use only.

Suitable/Unavailable Properties

Arizona, Suitable Land (by Agency)

Energy

Liberty Substation Buckeye, AZ Co: Maricopa 85326

Location: 3 miles south of Interstate 10 on Tuthill road

Federal Register notice date: 03/08/91

Property number: 4190030001

Status: Underutilized

Base closure: No

Comment: 15 acres; buffer area for substation.

California, Suitable Land (by Agency)

VA

Land,

VA Medical Center

Wilshire and Sawtelle Boulevards

Los Angeles, CA Co: Los Angeles 90073

Federal Register notice date: 03/08/91

Property number: 979010077

Status: Underutilized

Base closure: No

Comment: Approximately 30 acres of 80 acre tract; 7 acre portion contaminated; portions may be environmentally protected.

Iowa, Suitable Land (by Agency)

Energy

Sioux City Substation

Hinton, IA Co: Plymouth 51024

Location: 1 mile south of Hinton Iowa on Highway 75.

Federal Register notice date: 03/08/91

Property number: 419030003

Status: Underutilized

Base closure: No

Comment: 34 acres; limitation—easement restrictions; most recent use—transmission lines corridor and buffer area.

Illinois, Suitable Land (by Agency)

VA

VA Medical Center

3001 Green Bay Road

North Chicago, IL Co: Lake 60064

Federal Register notice date: 03/08/91

Property number: 979010082

Status: Underutilized

Base closure: No

Comment: 2.5 acres; currently being used as a construction staging area for the next 6-8 years; potential utilities.

Massachusetts, Suitable Land (by Agency)

VA

Bldg. 9H

DVA Medical Center

Perry Point

Perry Point, MA Co: Cecil 21902

Federal Register notice date: 03/08/91

Property number: 979010048

Status: Underutilized

Base closure: No

Comment: 19000 sq. ft.; 3 story reinforced concrete; basement floods; most recent use—nursing home

Maryland, Suitable Buildings (by Agency)

VA

Bldg. 8A

DVA Medical Center

Perry Point

Perry Point, MD Co: Cecil 21902

Federal Register notice date: 03/08/91

Property number: 979010047

Status: Underutilized

Base closure: No

Comment: 17000 sq. ft.; 1 story masonry; needs a roof; no utilities most recent use—storage.

Michigan, Suitable Land (by Agency)

VA

VA Medical Center

5500 Armstrong Road

Battle Creek, MI Co: Calhoun 49016

Federal Register notice date: 03/08/91

Property number: 979010015

Status: Underutilized

Base closure: No

Comment: 20 acres; used as exercise trails and storage areas; potential utilities.

Minnesota, Suitable Land (by Agency)

VA

Bldg. 43 Land Site

VA Medical Center

54th Street & 48th Avenue South

Minneapolis, MN Co: Hennepin 55417

Federal Register notice date: 03/08/91

Property number: 979010005

Status: Underutilized

Base closure: No

Comment: 8.9 acres; most recent use—parking; potential utilities.

Bldg. 227-229 Land

VA Medical Center

Fort Snelling

St Paul, MN Co: Hennepin 55111

Federal Register notice date: 03/08/91

Property number: 979010006

Status: Underutilized

Base closure: No

Comment: 2.0 acres; potential utilities; buildings occupied; residence/garage.

VA Medical Center

Near 5629 Minnehaha Avenue

Minneapolis, MN Co: Hennepin 55417

Location: Land (Site of Building 15, 16, 21, 48, 64, T10)

Federal Register notice date: 03/08/91

Property number: 979010024

Status: Underutilized

Base closure: No

Comment: 12.1 acres; most recent use—parking; potential utilities.

Land—12 acres

VAMC

Near 5629 Minnehaha Avenue

Minneapolis, MN Co: Hennepin 55417

Federal Register notice date: 03/08/91

Property number: 979010031

Status: Underutilized

Base closure: No

Comment: 12 acres; possible asbestos; leased to Department of Natural Resources as a park walking trail.

Suitable Buildings (by Agency)

Bldg. 15

VA Medical Center

Near 5629 Minnehaha Avenue

Minneapolis, MN Co: Hennepin 55417

Federal Register notice date: 03/08/91

Property number: 979010025

Status: Underutilized

Base closure: No

Comment: 15100 sq. ft.; 2 story concrete/brick frame; asbestos present in pipe insulation; most recent use—laundry.

Bldg. 16

VA Medical Center

Near 5629 Minnehaha Avenue

Minneapolis, MN Co: Hennepin 55417

Federal Register notice date: 03/08/91

Property number: 979010026

Status: Underutilized

Base closure: No

Comment: 8000 sq. ft.; 3 story concrete/brick frame; asbestos present on pipe insulation; most recent use—boiler plant.

Bldg. 21

VA Medical Center

Near 5629 Minnehaha Avenue

Minneapolis, MN Co: Hennepin 55417

Federal Register notice date: 03/08/91

Property number: 979010027

Status: Underutilized

Base closure: No

Comment: 3200 sq. ft.; 1 story prefab/quonset; most recent use—garage for motor vehicles.

Bldg. 48

VA Medical Center

Near 5629 Minnehaha Avenue

Minneapolis, MN Co: Hennepin 55417

Federal Register notice date: 03/08/91

Property number: 979010028

Status: Underutilized

Base closure: No

Comment: 200 sq. ft.; 1 story concrete/block; most recent use—incinerator/storage.

Bldg. 64

VA Medical Center

Near 5629 Minnehaha Avenue

Minneapolis, MN Co: Hennepin 55417

Federal Register notice date: 03/08/91

Property Number: 979010029

Status: Underutilized

Base closure: No

Comment: 380 sq. ft.; 1 story prefab; potential utilities.

Bldg. T-10

VA Medical Center

Near 5629 Minnehaha Avenue

Minneapolis, MN Co: Hennepin 55417

Federal Register notice date: 03/08/91

Property Number: 979010030

Status: Underutilized

Base closure: No

Comment: 1800 sq. ft.; 1 story prefab/quonset; potential utilities; most recent use—storage.

Bldg. 43

VA Medical Center

Near 5629 Minnehaha Avenue

Minneapolis, MN Co: Hennepin 55411-7

Location: 54th Street and 48th Avenue S.

Federal Register notice date: 03/08/91

Property Number: 979010032

Status: Underutilized

Base closure: No

Comment: 26000 sq. ft.; 8 story brick/steel frame; asbestos present on pipe insulation; most recent use—office/storage.

Bldg. 227

VA Medical Center

Fort Snelling
St. Paul, MN Co: Hennepin 55111
Federal Register notice date: 03/08/91
Property Number: 979010033
Status: Unutilized
Base closure: No
Comment: 850 sq. ft.; 2 story wood frame and brick residence; utilities disconnected.

Bldg. 240
VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111
Federal Register notice date: 03/08/91
Property Number: 979010038
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 241
VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111
Federal Register notice date: 03/08/91
Property Number: 979010037
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 242
VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111
Federal Register notice date: 03/08/91
Property Number: 979010038
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 244
VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111
Federal Register notice date: 03/08/91
Property Number: 979010039
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 245
VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111
Federal Register notice date: 03/08/91
Property Number: 979010040
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 246
VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111
Federal Register notice date: 03/08/91
Property Number: 979010041
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 247

VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111
Federal Register notice date: 03/08/91
Property number: 979010042
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 248
VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111
Federal Register notice date: 03/08/91
Property number: 979010043
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 253
VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111
Federal Register notice date: 03/08/91
Property number: 979010044
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 2 story wood frame; potential utilities; asbestos present on pipe insulation.

Bldg. 243
VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111
Federal Register notice date: 03/08/91
Property number: 979010045
Status: Unutilized
Base closure: No
Comment: 800 sq. ft.; 1 story wood frame; no utilities; most recent use—garage.

Bldg. 249
VA Medical Center
Fort Snelling
St. Paul, MN Co: Hennepin 55111
Federal Register notice date: 03/08/91
Property number: 979010046
Status: Unutilized
Base closure: No
Comment: 200 sq. ft.; 1 story wood frame; no utilities; most recent use—garage.

Montana, Suitable Land (by Agency)

Energy
Miles City Substation
Miles City, MT Co: Custer 59301
Location: 1 mile east of Miles City
Federal Register notice date: 03/08/91
Property number: 419030004
Status: Underutilized
Base closure: No
Comment: 59 acres; limitation—easement restrictions subject to grazing lease; most recent use—buffer area for substation.

Custer Substation
Custer, MT Co: Yellowstone 59024
Location: 2 miles east of the town of Custer—east of Highway 47
Federal Register notice date: 03/08/91
Property number: 419030006
Status: Underutilized
Base closure: No
Comment: 18 acres; buffer area for substation.

North Dakota, Suitable Land (by Agency)

Energy
Fargo Substation
Fargo, ND Co: Case 58102
Federal Register notice date: 03/08/91
Property number: 419030005
Status: Underutilized
Base closure: No
Comment: 25 acres; most recent use—transmission line corridor and buffer.

Nebraska, Suitable Land (by Agency)

Energy
Grand Island Substation
Phillips, NE Co: Merrick 68865
Location: 5 miles east of Grand Island and 4 miles west of Phillips.
Federal Register notice date: 03/08/91
Property number: 419030002
Status: Underutilized
Base closure: No
Comment: 11 acres; buffer area for substation; right-of-way for transmission lines for Nebraska Public Power District.

New York, Suitable Buildings (by Agency)

VA
Bldg. 5
V.A. Medical Center
Redfield Parkway
Batavia, NY Co: Genesee 14020
Federal Register notice date: 03/08/91
Property number: 979030001
Status: Underutilized
Base closure: No
Comment: Portion of 16800 sq. ft.; 3 stories; brick and masonry building; needs minor repairs.

Suitable Land (by Agency)

VA Medical Center
Fort Hill Avenue
Canandaigua, NY Co: Ontario 14424
Federal Register notice date: 03/08/91
Property number: 979010017
Status: Underutilized
Base closure: No
Comment: 27.5 acres; used for school ballfield and parking; existing utilities easements; portion leased.

Pennsylvania, Suitable Land (by Agency)

Commerce
Weather Service Forecast
192 Shafer Road
Corapolis, PA Co: Allegheny 15108
Federal Register notice date: 03/08/91
Property number: 279010006
Status: Underutilized
Base closure: No
Comment: 5 acres; limitation—future weather radar system site; potential utilities.

VA

Land No. 645
VA Medical Center
Highland Drive
Pittsburgh, PA Co: Allegheny 15206
Location: Between Campana and Wiltsie Streets.
Federal Register notice date: 03/08/91
Property number: 979010080
Status: Underutilized
Base closure: No

Comment: 52.42 acres; heavily wooded; property includes dump areas and numerous site storm drain outfalls.

VA Medical Center
New Castle Road
Butler, PA Co: Butler 16001
Federal Register notice date: 03/08/91
Property number: 979010016

Status: Underutilized
Base closure: No
Comment: Approximately 9.29 acres; used for patient recreation; potential utilities.

Puerto Rico, Suitable Buildings (by Agency)
DOT

USCG Officer/Charge Quarters
Cap San Juan Light
Fajardo PR Co: Fajardo
Federal Register notice date: 03/08/91
Property number: 879110001
Status: Excess
Base closure: No

Comment: 1197 sq. ft.; one story concrete block on floating slab; off-site use only; environmentally protected

Washington, Suitable land (by Agency)
Commerce

NOAA Western Regional Center
7600 Sand Point Way, NE.
Seattle, WA Co: King 98115-0070
Federal Register Notice date: 03/08/91
Property number: 279040001
Status: Unutilized
Base closure: No

Comment: 35 acres with 6000 sq. ft.; two story wood frame Bldg. #7; presence of asbestos; structurally deteriorated.

Energy

Raver Substation
(See County), WA Co: King
Location: Approximately 16 miles east of Kent.

Federal Register Notice date: 03/08/91
Property number: 419030012
Status: Unutilized
Base closure: No
Comment: 10+ acres; potential utilities; heavily treed.

[FR Doc. 91-5341 Filed 3-7-91; 8:45 am]
BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-920-91-4111-08]

Colorado; Availability of the Colorado Oil and Gas Leasing Development Final Environmental Impact Statement and Proposed Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Colorado Oil and Gas Leasing and Development Final Environmental Impact Statement and Proposed Amendment for the Glenwood Springs, Kremmling, Little Snake, Northeast, and San Juan/San Miguel Resource

Management Plans. Notice of this document was made available in the EPA notice of February 8, 1991, in the Federal Register.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management has prepared the Colorado Oil and Gas Leasing and Development Final Environmental Impact Statement (EIS) and proposed amendment for the Glenwood Springs, Kremmling, Little Snake, Northeast and San Juan/San Miguel Resource Management Plans (RMPs). This proposed action, if approved, amends oil and gas leasing decisions for the 5.1 million acres of federal mineral estate within the respective planning areas. This action is being taken to comply with new guidance requiring a cumulative impact analysis prior to making oil and gas leasing and development decisions. The proposed plan amendment is protestable as provided for in 43 CFR 1610.5-2.

DATES: Protests to the proposed plan amendment must be postmarked within 30 days of the date that the Environmental Protection Agency (EPA) publishes its notice of availability of this document in the Federal Register.

ADDRESS: Protests should be sent to: Director (760), Bureau of Land Management, Premier Building, room 909, 1725 I Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jim Rhet, Branch of Fluid Minerals, Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, telephone (303) 239-3752. Single copies of the document may also be obtained from this address.

SUPPLEMENTARY INFORMATION: The Final EIS analyzes three alternatives for oil and gas leasing and development, including the alternative of no action defined as the continuation of present management, leasing with standard terms and conditions, and the proposed action which contains the management prescriptions that local managers believe to be the best balance of past practices, and new prescriptions developed from internal and public comments.

Any person who participated in the planning process and has an interest which is or may be adversely affected by the proposed RMP amendment may protest. All protests must include the following information:

1. The name, mailing address, telephone number, and interest of the person filing the protest.
 2. A statement of the issue or issues being protested.
 3. A statement of the part or parts being protested.
 4. A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the records.
 5. A short concise statement explaining why the State Director's decision is believed to be wrong.
- No sooner than the end of the 30-day protest period, and following a consistency review by the Governor of Colorado, the proposed RMP amendment, excluding any portions under protest or found inconsistent, shall become final. Approval will be withheld on any portion of the amendment under protest until final action has been completed on such protest.

Dated: March 1, 1991.

Tom Walker,
Associate State Director for Colorado.
[FR Doc. 91-5544 Filed 3-7-91; 8:45 am]
BILLING CODE 4310-JB-M

[MT-070-4332-08]

Availability of the Final Wilderness Suitability Study and Environmental Impact Statement for the Sleeping Giant and Sheep Creek Wilderness Study Areas (WSA); MT

AGENCY: Butte District Office, Bureau of Land Management, Interior.

ACTION: Notice of Availability of the Final Wilderness Suitability Study and Environmental Impact Statement (EIS) for the Sleeping Giant and Sheep Creek WSAs.

SUMMARY: Pursuant to section 102(2) (C) of the National Environmental Policy Act of 1969 and sections 603(a) and 202(a) of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management has prepared a final wilderness suitability study and EIS for the Sleeping Giant and Sheep Creek WSAs. These WSAs are located near Holter Lake in Lewis and Clark County, West-central Montana. The capital city of Helena is approximately 30 miles south, while Great Falls is some 60 miles northeast. The Sleeping Giant and Sheep Creek WSAs are adjacent to one another and are separated by a powerline and an associated maintenance road. The Sleeping Giant

WSA is 6,487 acres in size and the Sheep Creek WSA contains 3,927 acres.

The EIS assesses the environmental consequences of managing the two WSAs as wilderness and nonwilderness. The proposed action recommends that the two WSAs be designated wilderness and managed in accordance with the Wilderness Act of 1964.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to President and to Congress. The final decision on wilderness designation rests with the Congress. In any case, no action on these proposals can be taken by the Secretary of Interior during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10b(2).

SUPPLEMENTARY INFORMATION: Copies of the final document are available at the following BLM offices:

Butte District Office, Bureau of Land Management, P.O. Box 3388, Butte, Montana 59702, at phone 406-494-5059 or FTS 585-8059.

Montana State Office, Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107-6800, at phone 406-255-2936 or FTS 588-7936.

FOR FURTHER INFORMATION CONTACT: Bradley Rixford, Project Manager, Bureau of Land Management, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59702, at phone 406-494-5059 or FTS 585-8059.

Dated: February 27, 1991.

Jonathan P. Deason,
Director, Office of Environmental Affairs.
[FR Doc. 91-5123 Filed 3-7-91; 8:45 am]
BILLING CODE 4310-DN-M

[OR-050-01-4320-02-ADVB; GP1-134]

Prineville District Grazing Advisory Board; Meeting

February 28, 1991.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: A meeting of the District Grazing Advisory Board for the Prineville District, Bureau of Land Management, will be held in the District Office conference room, 185 E. Fourth Street, Prineville, Oregon, beginning at 10 a.m. on Thursday, April 18, 1991. Discussion topics will include:

1. An overview of the Bureau's national rangeland management program, "The Range of Our Vision";

2. Accomplishments and direction of this year's allotment evaluation efforts;
3. The drought situation;
4. Central Oregon Natural Resources Coalition update;
5. Updated project status report;
6. Grazing and riparian management section of the Deschutes River Plan.

FOR FURTHER INFORMATION CONTACT:

James L. Hancock, Prineville District Office, 185 E. Fourth Street (P.O. Box 550), Prineville, Oregon 97754 (Telephone (503) 447-4115).

Donald L. Smith,

Acting District Manager.

[FR Doc. 91-5445 Filed 3-7-91; 8:45 am]

BILLING CODE 4310-33-M

[OR-130-4830-12-ADVB; GP1-133]

Spokane District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice is hereby given in accordance with Public Law 94-579 and 43 CFR, part 1780, that a meeting of the Spokane District Advisory Council will be held on April 25, 1991. The meeting will begin at 10 a.m., in the conference room of the BLM Spokane District Office, East 4217 Main Avenue, Spokane, Washington. The agenda of the meeting is as follows:

1. Opening remarks and general business.
2. Spokane District Resource Management Plan (RMP) Amendment.
3. Yakima Canyon Program.
4. San Juan County.
5. Land Exchange Update.
6. Mineral Resource Issues.
7. Outlook for FY 91.

Any responsible person wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Spokane District Office, East 4217 Main Avenue, Spokane, Washington 99202, or telephone (509) 353-2570 by the close of business, 4:30 p.m., Friday, April 19, 1991. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

A written report of the Council Meeting will be maintained at the BLM Spokane District Office and will be made available for public inspection.

Reproduction of the meeting report will be made available to the public at the cost of duplication.

The meeting is open to the public and news media.

Dated: March 1, 1991.

Joseph K. Buesing,

District Manager.

[FR Doc. 91-5446 Filed 3-7-91; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-01-4214-10; GP1-126; OR-44954]

Opening of National Forest Lands; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will terminate the temporary two-year segregative effect as to 11,675.51 acres of National Forest land included in an application for withdrawal involving the Pringle Falls Experimental Forest.

EFFECTIVE DATE: March 31, 1991.

FOR FURTHER INFORMATION CONTACT:

Linda Sullivan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2310.2-1(d), at 8:30 a.m., on March 31, 1991, the temporary two-year segregative effect of withdrawal application OR-44954 shall be terminated as to the following described lands. Such termination shall not effect the processing of the withdrawal application:

Williamette Meridian

Deschutes National Forest

T. 20 S., R. 9 E.,

Sec. 28, SW ¼;

Sec. 29, S ½;

Sec. 30, E ½ SW ¼ and SE ¼;

Sec. 31, E ½ and E ½ W ¼;

Sec. 32;

Sec. 33, W ½ NE ¼, SE ¼ NE ¼, W ½, and SE ¼;

Sec. 34, SW ¼ SW ¼.

T. 21 S., R. 9 E.,

Sec. 4, lots 1, 2, 3, and 4, and S ½ N ½;

Sec. 5, lots 1, 2, 3, and 4, and S ½ N ½;

Sec. 6, lots 1 to 5, inclusive, S ½ NE ¼, and SE ¼ NW ¼;

Sec. 21 and 22;

Sec. 23, NW ¼ and S ½;

Sec. 24 to 28, inclusive;

Sec. 32 to 36, inclusive.

The areas described aggregate 11,675.51 acres in Deschutes County.

Dated: February 22, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-5527 Filed 3-7-91; 8:45 am]

BILLING CODE 4310-33-M

[OR-110-4212-11-25-7A: G-1-132]

Realty Action, R&PP Lease, Oregon.

SUMMARY: The following public lands in Jackson County, Oregon have been found suitable for classification as lease under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*) Lease No. ORE 013626 was issued to Jackson County School District No. 94, Pinehurst Elementary School. Application has been made for additional uses and additional acreage to be developed for a baseball diamond and field in the following location:

Willamette Meridian

T. 40 S., R. 4 E.,
Sec. 7, SE1/4NE1/4NW1/4.

Containing an additional 4.59 acres, more or less.

The lands are not needed for federal purposes. Lease is consistent with current BLM land use planning and would be in the public interest.

The lease amendment (No. 1) will include the following additional uses, which are within the original 6.63 acres of lease No. ORE 013626:

32' x 48' annex and parking lot.

This amendment will also include an additional 4.59 acres to be developed as a baseball diamond and field, including fencing, bleachers, well and parking area.

The amended lease will be subject to the above-cited Recreation and Public Purposes Act, as amended and all applicable regulations issued by the Secretary of Interior. Detailed information concerning this action is available for review at the Medford District Office of the Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease amendment to the District Manager, Medford District Office, 3040 Biddle Rd., Medford, Oregon 97504. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will

become effective 60 days from the date of publication of this notice.

James P. Clasen,
Associate District Manager.
[FR Doc. 91-5492 Filed 3-7-91; 8:45 am]
BILLING CODE 4310-33-M

[OR-943-01-4214-10; GP1-127; OR-46538]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 1,972.28 acres of public lands and 307.13 acres of private lands, which will be acquired through land exchange, for protection of the Coos Bay North Spit Special Recreation Management Area. This notice closes the lands for up to 2 years from mining. The public lands will remain open to surface entry and mining unless otherwise withdrawn.

DATES: Comments and requests for a public meeting must be received by June 6, 1991.

ADDRESSES: Comments and meeting requests should be sent to the Oregon State Director, BLM, P.O. Box 2965, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Linda Sullivan, BLM, Oregon State Director, P.O. Box 2965, Portland, Oregon 97208, 503-280-7171.

SUPPLEMENTARY INFORMATION: On February 19, 1991, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from location or entry under the mining laws, subject to valid existing rights:

Willamette Meridian**Public Domain Lands**

T. 25 S., R. 13 W.,
Sec. 4, N1/4NW1/4;
Sec. 5, fractional NW1/4NW1/4;
Sec. 6, lots 1, 2, 3, and 4, SE1/4NE1/4, and E1/2SE1/4;
Sec. 7, lots 2 through 8, inclusive, NE1/4, SE1/4NW1/4, E1/2SW1/4, and fractional SW1/4SW1/4;
Sec. 18, lots 7 and 8, E1/4NW1/4, fractional W1/2NW1/4, and fractional NW1/4SW1/4.
T. 25 S., R. 14 W.,
Sec. 12, lot 1;
Sec. 13, lots 1, 2, 3, and 4, and E1/2SE1/4;
Sec. 23, lot 1;
Sec. 24, lots 6 through 13, inclusive, W1/2NE1/4, and NE1/4SW1/4;
Sec. 25, lot 3;
Sec. 26, lots 8, 9, and 10.

The areas described aggregate 1,972.28 acres in Coos County, Oregon.

Willamette Meridian**Private Lands**

T. 24 S., R. 13 W.,
Sec. 32, E1/2SW1/4.
T. 25 S., R. 13 W.,
Sec. 5, SW1/4NE1/4;
Sec. 8, lot 3;
Sec. 18, lots 3 and 4, and NE1/4SW1/4;
Sec. 19, lot 4.
T. 25 S., R. 14 W.,
Sec. 24, lot 4;
Sec. 25, lot 1.

Including any accretion of lands, the areas described aggregate 307.13 acres in Coos County, Oregon.

The purpose of the proposed withdrawal is to protect the Coos Bay North Spit Special Recreation Management Area which is located near the cities of Coos Bay and North Bend.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director, Bureau of Land Management, at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director, Bureau of Land Management, at the address indicated above, within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For the period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are leases, licenses, permits, rights-of-way, and disposal of mineral or vegetative resources other than under the mining laws.

Dated: February 22, 1991.

Robert E. Mollohan,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-5526 Filed 3-7-91; 8:45 am]
BILLING CODE 4310-33-M

Fish and Wildlife Service**Receipt of Applicants for Permit**

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-756126

Applicant: Robert W. Stafford, Tehachapi, CA

The applicant requests a permit to take, via Sherman live traps, Tipton kangaroo rats (*Dipodomys nitratoideus nitratoideus*) for biological surveying purposes in Kern and Tulane Counties, California, to determine the presence of the species within the boundaries of proposed development sites.

PRT-756523

Applicant: St. Louis Zoological Park, St. Louis, MO

The applicant requests a permit to import two captive-born female black lemurs (*Lemur macaco macaco*) from Zoo Mulhouse, Mulhouse, France for breeding and display purposes.

PRT-755734

Applicant: Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to purchase one male Asian elephant (*Elephas maximus*) from Metro Washington Park Zoo, Portland, Oregon, for breeding purposes.

PRT-756357

Applicant: Adriatic Animal Attractions, Inc., Orlando, FL

The Applicant requests a permit to export one female white tiger and one female standard color tiger (*Panthera tigris*) born at Ft. Walton Beach, Florida, to Prince Rainier of Monaco, for the purpose of educational display.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: March 4, 1991.

Karen W. Rosa,
Acting Chief, Branch of Permits, Office of
Management Authority.

[FR Doc. 91-5490 Filed 3-7-91; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

The following applicant have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT 745033

Applicant: Scientific Research and Consulting Service, Marina, CA

The applicant requests an amendment to his permit to add Struve Slough in Santa Cruz County, California, as a site to take (i.e. capture by drift fencing and can trapping, use of nets for larvae from any new locality for identification purposes and return to capture site) the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*) for surveying purposes.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: March 4, 1991.

Karen W. Rosa,
Acting Chief, Branch of Permits, Office of
Management Authority.

[FR Doc. 91-5489 Filed 3-7-91; 8:45 am]

BILLING CODE 4310-55-M

Office of Surface Mining Reclamation and Enforcement**Request for Determination of Valid Existing Rights Within the National Wild and Scenic River Study Corridor for the Allegheny River**

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of decision.

SUMMARY: This notice announces the decision of OSM on a request by Rosebud Mining Company for a determination of valid existing rights (VER) under section 522(e)(1) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). OSM has determined that Rosebud Mining Company does not possess VER to conduct underground coal mining operations on six acres of privately owned land within a study corridor established in 1978 by Congress for the Allegheny River in Pennsylvania under the Wild and Scenic Rivers Act (WSRA). Mining by Rosebud Mining Company in the study river corridor is prohibited until the study report prepared by the United States Department of Agriculture (USDA) Forest Service is acted upon by Congress. If Congress decides to remove the designation pursuant to WSRA as the USDA study report recommends, then Rosebud is encouraged to re-apply for necessary approvals since the section 522(e)(1) prohibition would no longer apply.

ADDRESSES: Documents comprising the administrative record are available for public review and copying during regular business hours in room 246, Office of Surface Mining Reclamation and Enforcement Department of Interior, Ten Parkway Center, Pittsburgh, Pennsylvania 15220. Copies of the Director's decision and of relevant notices may be obtained at the same location.

FOR FURTHER INFORMATION CONTACT: Charles H. Wolf, Office of Program Support, Eastern Service Center, Office of Surface Mining Reclamation and Enforcement, Department of the Interior, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, (412) 937-2897.

SUPPLEMENTARY INFORMATION:**I. Background on VER**

Section 522(e) of SMCRA, 30 U.S.C. 1272(e), prohibits surface coal mining operations in certain areas, subject to VER and except for those operations which existed on August 3, 1977. Specifically, paragraph (e)(1) of section 522 provides that—

After the enactment of this Act and subject to valid existing rights, no surface coal mining operations except those which exist on the date of enactment of this Act shall be permitted on any lands within the boundaries of units of the * * * Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act * * *.

The term "valid existing rights" is not defined in SMCRA. OSM's first attempt to define VER in 1979 was an effort to limit the exemption to those property rights in existence on August 3, 1977, the owners of which either had obtained all necessary permits on or before August 3, 1977, or could demonstrate that the coal for which the exemption was sought was both needed for, and immediately adjacent to, a mining operation in existence prior to August 3, 1977 (44 FR 15342).

On judicial review, the court remanded to the Secretary of the Interior that portion of the definition requiring the property owner to have obtained all permits necessary to mine. Specifically, the court indicated that "a good faith attempt to have obtained all permits before the August 3, 1977, cut-off date should suffice for meeting the all permits test." In re Permanent Surface Mining Regulation Litigation I No. 79-1144, Mem. Op. (D.D.C. February 26, 1980), 14 ERC 1083, 1091 (hereafter PSMRL I, Round I).

On June 10, 1982, OSM initiated a rulemaking to revise the definition of VER by proposing for public review and comment a "good faith/all permits" test and several other alternatives which can all be described as "mechanical" tests. As a result of public comment, OSM dropped further consideration of such mechanical tests and on September 14, 1983, promulgated a broad definition of VER which relied on a "takings standard" (48 FR 41312). Under this standard a person possesses if the application of any of the prohibitions contained in section 522(e) of SMCRA would result in a taking of that person's property which would entitle the person to just compensation under the Fifth and Fourteenth Amendments to the Constitution.

On judicial review, the court held that the broad takings standard represented a significant departure from the mechanical tests of the proposed rule and that a new notice and public comment period was necessary. In re Permanent Surface Mining Regulation Litigation II No. 79-1144, Mem. Op. (D.D.C. March 22, 1985) 22 ERC 1557. The court remanded the definition of VER to the Secretary of the Interior for proper notice and comment.

In response to the court order, OSM on November 20, 1986, suspended portions of the Federal rules that had adopted a "takings" test (51 FR 41955). This same notice announced that until a new definition of VER was promulgated, OSM would make VER determinations on Federal lands and on non-Federal lands within the boundaries of areas specified in section 522(e)(1) of SMCRA

where operations would affect the Federal interest, using the VER definition contained in the appropriate State or Federal regulatory program. Where the State regulatory program contains a VER definition similar to OSM's 1979 "all permits" test, OSM announced that it will apply the test to include the District Court's suggestion that a good faith effort to obtain all permits would establish VER.

II. The Rosebud Mining Company Request

On April 8, 1985, Rosebud Mining Company applied to the Pennsylvania Department of Environmental Resources (DER) for a permit to conduct underground mining operations in Perry Township, Armstrong County, Pennsylvania. The proposed operations are in the Lower Kittanning coal seam and would affect 16.5 acres of surface area and 2,135 acres of subsurface area. The application was reviewed and permit no. 03851301 was issued by the Pennsylvania DER on October 17, 1988. No mining occurred, however. Over one year and six months after obtaining the permit, Rosebud Mining Company requested on April 30, 1990 that OSM make a determination of VER to conduct underground coal mining operations on privately owned lands within the study corridor established for the Allegheny River under the WRSA (Administrative Record No. 6.11).

The proposed mine, Rosebud Mine No. 2, encompasses 2150 acres of permit area and is located between river mile markers 78 and 79, near the town of West Monterey. Only six acres of the permit area are within the one-quarter mile study corridor for the Allegheny River and potentially subject to the mining prohibition. Within these six acres, Rosebud proposed to construct an access road, water treatment ponds, and part of an employee parking lot. A representative of OSM suggested to Rosebud that it place these surface disturbances elsewhere, so that its operation would not be subject to the mining prohibition. Rosebud cited engineering concerns and chose not to relocate the ponds, road and parking lot.

OSM provided public notice of the Rosebud Mining Company request for VER with announcements published in the June 5, 1990, Federal Register (55 FR 22962) and in the Progress News a weekly newspaper of general circulation in Armstrong County, Pennsylvania. The public comment period closed on July 20, 1990.

OSM notified the USDA Forest Service on May 15, 1990, that it had received a request for VER from Rosebud Mining Company and

requested the factual information, including supporting documentation, on when the WRSRA study corridor boundaries were established and other information related to the Rosebud request (Administrative Record No. 6.16). The USDA Forest Service responded to OSM's request by letter dated June 14, 1990 (Administrative Record No. 6.27).

III. Applicable VER Standard

With respect to non-Federal lands within the boundaries of areas specified in section 522(e)(1) of SMCRA, OSM will make the VER determinations, rather than the State, because of the Federal interest at stake in a Wild and Scenic Study River corridor. See 30 CFR 740.4(a), 740.11(a) and 745.13(o). However, OSM will use the definition of VER in the approved State regulatory program. As stated in OSM's suspension notice of November 20, 1986 (51 FR 41955), OSM will approach each VER determination on a case-by-case basis and will examine the particular circumstances which surround individual determinations. In States which have an all permits test, OSM will apply the test to include the good faith modification suggested by the district court in PSMRL I, Round I.

On July 30, 1982, the Commonwealth of Pennsylvania earned approval of its permanent program submission (47 FR 33079). Pennsylvania defined the term VER, as:

Those property rights in existence on August 3, 1977, that were created by a legally-binding conveyance, lease, deed, contract, or other document which authorizes the applicant to produce minerals by a surface mining operation; and provided further that the person proposing to conduct surface mining operations on such lands holds all current State and Federal permits necessary to conduct such operations on those lands either held those permits on August 3, 1977, or had made by that date a complete application for the permits, variances, and approvals required by the Department.

25 PA Code 88.1

The State's rules at 25 PA Code 88.1 clarify the above definition by stating that a party's mere expectation of the right to conduct surface mining operations or the right to conduct underground coal mining is not sufficient support to establish an applicant's claim of VER. Under these rules, interpretation of the terms of the document relied upon to establish VER shall be based upon the usage and custom at the time and place where it came into existence, and upon a showing by the applicant that the

parties to the document actually contemplated a right to conduct the same underground or surface mining activities for which the applicant claims VER and that such document has been signed by the surface owner.

IV. Application of Pennsylvania's VER Standard

In applying the Pennsylvania VER standard, OSM reviewed evidence in the administrative record to determine if Rosebud Mining Company applied for the necessary permits prior to the time when the Allegheny River study corridor was designated and demonstrated the property right to mine the coal from the areas in question. OSM discovered that the Allegheny River study corridor was designated by Congress in 1978. Guidelines implementing the study corridor were promulgated in 1982 by the USFS. Rosebud did not apply for permits until 1985. Its permit calls for land disturbances in the study corridor, despite the pre-existing Congressional prohibition.

To prove property rights, Rosebud Mining Company submitted to OSM several coal lease agreements and deeds between either Glacial Holding, Inc. or Glacial Minerals, Inc. and individual landowners as proof of the property right to mine (Administrative Record No. 6.28). Glacial Holding, Inc. merged with Glacial Minerals, Inc. on September 30, 1984. Glacial Minerals, Inc. now holds an 80 percent interest in Rosebud Mining Company. The coal lease agreements evidence a property interest less constitutionally protected than if Rosebud owned the mineral in fee simple. However, Rosebud Mining Company's right to mine the properties in question, subject to the Congressional prohibition in the study corridor, is not disputed for the purposes of this VER analysis. In addition, Rosebud Mining Company also provided to OSM contractual statements whereby landowners acknowledge that Rosebud can enter upon and disturb the surface for the purpose of mining. Such consent is required under the definition of VER at 25 PA Code 86.1 (Administrative Record No. 6.28).

Under the definition of VER at 25 PA code 86.1, an applicant for VER must demonstrate that it holds all current State and Federal permits necessary to conduct mining operations and either held those permits on August 3, 1977, or had made by that date a complete application for permits, variances and approvals required by the Department. OSM concludes that because Rosebud Mining Company did not submit a

permit application to PADER until April 8, 1985, it fails to satisfy this requirement and therefore does not possess VER as defined by Pennsylvania regulatory program. Pennsylvania rules, unlike the Federal rules at 30 CFR 761.5, do not provide for continuously created VER whereby owners of property which come under the protection of section 522(e) of SMCRA after August 3, 1977, can be found to possess VER.

OSM reviewed the history of the WSR and the Allegheny River study to determine if there is a possibility that Rosebud Mining has VER under the concept of continuously created VER as set forth in the Federal rules. October 2, 1968, Congress passed the WSR (Pub. L. 90-542) to protect free-flowing rivers with outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values. The Departments of Agriculture and the Interior were given responsibility for initiating studies of rivers which the Act authorized as potential additions to the National Wild and Scenic Rivers System (NWSRS). In February 1970, the Departments of Agriculture and the Interior promulgated guidelines for evaluating wild, scenic and recreational river areas proposed for inclusion in the NWSRS. These guidelines were silent as to the area to be studied.

In 1978, Congress amended the WSR (Pub. L. 95-625) to include the Allegheny River from Kinzua Dam to East Brady, Pennsylvania for study to determine its suitability for inclusion in the NWSRS. The USDA Forest Service was designated the lead agency for the study which was begun in the fall of 1980 following the 1970 guidelines for conducting wild and scenic river studies.

On August 2, 1979, the President directed the Secretary of Agriculture and the Secretary of the Interior to jointly revise the 1970 guidelines for evaluating wild, scenic and recreational rivers. Accordingly, the Final Revised Guidelines for Eligibility, Classification, and Management of River Areas were promulgated on September 7, 1982 (47 FR 29454). These guidelines defined the river area for study as "an area extending at least one-quarter mile from each bank" and expressly pre-empted the 1,100-foot boundary in effect since 1980. OSM sought a legal opinion concerning whether the one-quarter mile area applied to Rosebud and when the application took effect. USDA Forest Service's opinion was that these 1982 final revised guidelines have the effect of law and are binding upon the agency. (Administrative Record No. 6.27). On

October 30, 1986, Congress amended the WSR to add language that "the boundaries of any river proposed in section 1276(a) of this title for potential addition to the NWSRS shall generally comprise that area measured within one-quarter mile from the ordinary high-water mark on each side of the river." Rosebud contends that the one-quarter mile boundary did not take effect until 1986, after it already applied for permits. OSM disagrees based upon the legal opinion of the USDA Forest Service that the boundary took effect in 1982.

V. Conclusion

OSM finds that Rosebud Mining Company did not make a good-faith attempt to obtain all necessary permits until April 8, 1985. The prohibitions of section 522(e)(1) of SMCRA took effect on the lands in 1982 when the Forest Service regulations set the boundary for the study corridor. Rosebud knew, or should have known, that its proposed surface disturbances were within the boundary, when it proposed its operation in 1985. It should have relocated its proposed ponds and parking lot outside the one-quarter mile area. OSM also disagrees with environmentalist commentators who argue that Rosebud had to have filed for permits in 1977. The area in question was not subject to the 522(e)(1) prohibitions until 1982. Based upon these conclusions and information present in the administrative record, OSM finds that Rosebud Mining Company does not possess VER to mine the six acres in question. Accordingly, their request to be granted VER is denied. However, if Congress rescinds the study corridor designation, then the mining prohibition of section 522(e)(1) would no longer apply and the issue of VER would be moot.

VI. Appeals

Any person who is or may be adversely affected by this decision may appeal to the Interior Board of Land Appeals under 43 CFR 4.1390 *et seq.* (1988). Notice of intent to appeal must be filed within 30 days from the date of publication of this notice of decision in a local newspaper with circulation in Armstrong County, Pennsylvania.

Dated: February 26, 1991.

Harry M. Snyder,
Director.

[FR Doc. 91-5443 Filed 3-7-91; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-304]

Red Tart Cherries; Economic and Competitive Factors Affecting the U.S. Industry**AGENCY:** United States International Trade Commission.**ACTION:** Cancellation of hearing.**EFFECTIVE DATE:** March 5, 1991.

SUMMARY: On November 19, 1990, following receipt of a request from the Committee on Ways and Means, U.S. House of Representatives, the Commission instituted Investigation No. 332-304, under section 332(g) of the Tariff Act of 1930, and scheduled a public hearing in connection therewith for March 12, 1991. On March 4, 1991, the Commission received notice from the only scheduled witness for the hearing that it was withdrawing its request to appear at the public hearing scheduled for March 12, 1991. Therefore, the public hearing in connection with this investigation (scheduled to be held beginning at 9:30 a.m. on March 12, 1991, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC), is cancelled.

FOR FURTHER INFORMATION CONTACT: Stephen Burket (202-252-1318) or David Ingersoll (202-252-1309), Agriculture Division, Office of Industries, U.S. International Trade Commission. Hearing-impaired persons can obtain information on this study by contacting our TDD terminal on (202) 252-1810.

By order of the Commission.

Issued: March 5, 1991.

Kenneth R. Mason,
Secretary.

[FR Doc. 91-5626 Filed 3-7-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION**Notice of Intent to Engage in Compensated Intercorporate Hauling Operations**

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: American Brands, Inc., 1700 East Putnam Avenue, Old Greenwich, Connecticut 06870-0811.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

- (I) ACCO World Corporation—Delaware
- (II) Polyblend Corporation—Illinois
- (III) Vogel Peterson Furniture Company—Delaware
- (IV) Swingline Inc.—Delaware
- (V) Wilson Jones Company—Delaware
- (VI) Day-Timers, Inc.—Delaware
- (VII) Perma Products Company—Delaware
- (VIII) Sax Arts and Crafts, Inc.—Delaware
- (IX) Kensington Microware Limited—Delaware
- (X) MasterBrand Industries, Inc.—Delaware
- (XI) Moen Incorporated—Delaware
- (XII) Twentieth Century Companies, Inc.—Delaware

Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 91-5543 Filed 3-7-91; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 388 (Sub-No. 15)]**Intrastate Rail Rate Authority—Minnesota****AGENCY:** Interstate Commerce Commission.**ACTION:** Notice of recertification.

SUMMARY: Pursuant to 49 U.S.C. 11501(b), the Commission recertifies the State of Minnesota to regulate intrastate rail rates, classifications, rules, and practices for a 5-year period.

DATES: Recertification will be effective April 7, 1991 and will expire April 6, 1996.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Decided: March 1, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-5542 Filed 3-7-91; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE**Information Collections Under Review**

March 5, 1991.

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published.

Entries are grouped into submission categories, with each entry containing the following information:

- (1) The title of the form/collection;
- (2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
- (3) How often the form must be filled out or the information is collected;
- (4) Who will be asked or required to respond, as well as a brief abstract;
- (5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
- (6) An estimate of the total public burden (in hours) associated with the collection; and,
- (7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395-7340 AND to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 514-4312.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer AND the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, AND to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

- (1) Application for Posthumous Citizenship.
- (2) N-644, Immigration and Naturalization Service.
- (3) On occasion.

(4) Individual or households. Information is needed to implement Posthumous Citizenship for Active Duty Service Act, Public Law 101-249, to determine eligibility to request such citizenship status for decedent.

(5) 14,000 annual respondents at 1.833 hours per response.

(6) 25,662 estimated annual burden hours.

(7) Not applicable under 3504(h).

New Collection

(1) Iran Claims Program.

(2) No form number. Foreign Claims Settlement Commission.

(3) One-time.

(4) Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations. Data will be used as basis for determining entitlement to awards payable by the Department of the Treasury out of Iran compensations funds for property and financial claims of US Nationals against the Iranian government arising out of the Iranian revolution.

(5) 3,100 annual respondents at 5 hours per response.

(6) 15,500 estimated annual burden hours.

(7) Not applicable under 3504(h).

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) Civil Liberties Act of 1968—Voluntary Information Form.

(2) CRT-55. Office of Redress Administration, Civil Rights Division.

(3) One time.

(4) Individuals or households. Under the provisions of 50 U.S.C. app. 1989b, this voluntary form may be used to locate persons of Japanese ancestry who were confined, held in custody, relocated, or otherwise deprived of liberty during WW II.

(5) 16,000 annual respondents at 0.5 hours per response.

(6) 8,000 estimated annual burden hours.

(7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection of Information Without Any Change in the Substance or in the Method of Collection

(1) National Corrections Reporting Program.

(2) NCRP-1A, NCRP-18, NCRP-1C. Bureau of Justice Statistics, Office of Justice Programs.

(3) Annually.

(4) State or local governments, Federal agencies or employees. The NCRP provides data on prison admissions and releases and on parole entries and exits.

No other collection series provides comparable data across jurisdictions. Data used to determine trends in inmate composition, sentencing and time served. Data provided by corrections departments and the Federal Bureau of Prisons is used by the BJS, Congress, researchers, practitioners and other members of the criminal justice community.

(5) 625,000 annual respondents at 0.0020 hours per response (average manual response and ADP response).

(6) 1,250 estimated annual burden hours.

(7) Not applicable under 3504(h).

Larry E. Miesse,

Department Clearance Officer, Department of Justice.

[FR Doc. 91-5525 Filed 3-7-91; 8:45 am]

BILLING CODE 4410-10-M

Lodging of Consent Decree; Corinne, UT, et al.

In accordance with United States Department of Justice departmental policy 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States v. City of Corinne, et al.* (D. Utah), has been lodged with the United States District Court for the District of Utah.

The proposed consent decree concerns alleged violations of the Clean Water Act, 33 U.S.C. 1311, as a result of the discharge of fill material into portions of the Bear River and adjacent areas in Box Elder County, Utah, which constitute "waters of the United States." The consent decree requires the defendants, City of Corinne, C.R. Clark, Robert Gilbert and Marie Trippodi, to remove the fill materials and restore and stabilize the sites to the satisfaction and specifications of the United States Army Corps of Engineers and the United States Environmental Protection Agency, and dispose of it at a site compatible with county and state ordinances, regulations and statutes. Defendants' removal of unpermitted fill & restoration of the sites is to take place by June 1, 1991. The consent decree provides that each defendant will pay civil penalties in the amount of \$5,000 if defendants fail to comply by June 1, 1991 and additional penalties of \$5,000 per month of noncompliance.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice written comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Attention: Brian J. Plant, P.O.

Box 23986, Washington, DC 20026-3986 and should refer to *United States v. City of Corinne, et al.*, DJ Reference No. 90-5-1-1-3278.

The consent decree may be examined at the Clerk's Office, United States District Court for the District of Utah, United States Courthouse, room 204, 350 South Main Street, Salt Lake City, Utah 84101.

Richard B. Stewart,

Assistant Attorney General Environment and Natural Resources Division.

[FR Doc. 91-5512 Filed 3-7-91; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-25,133]

Eastman Christensen Houston, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Eastman Christensen, Houston, Texas. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-25,087; Eastman Christensen, Houston, Texas (March 1, 1990)

Signed at Washington, DC this 4th day of March 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-5536 Filed 3-7-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,139]

Harvey Industries, Inc. a/k/a Harvey Manufacturing, Inc., a/k/a L & N Enterprises, Inc., Athens, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 31, 1991 applicable to all workers of Harvey Industries, Inc., Athens, Texas. The Certification Notice

was published in the Federal Register on February 26, 1991 (56 FR 7066).

New information from the company shows that a series of name changes occurred during the coverage period but the worker group, products produced and ownership all remained the same. The worker group was called Harvey Manufacturing through March 31, 1990; from April 1, 1990 until October 1, 1990 the worker group was identified as L & N Enterprises. On October 1, 1990 the worker group became Harvey Industries, Inc. The notice, therefore, is amended to properly reflect the correct worker groups.

The amended notice applicable to TA-W-25,139 is hereby issued as follows:

All workers of Harvey Industries, Inc., also known as Harvey Manufacturing, Inc., and also known as L & N Enterprises, Inc., Athens, Texas who became totally or partially separated from employment on or after November 19, 1989 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of February 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-5539 Filed 3-7-91; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Albert Nipon-Leslie Fay Corp., et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the

determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 18, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 18, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 25th day of February 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Albert Nipon-Leslie Fay Corp. (Wkrs)	Philadelphia, PA	02/25/91	02/12/91	25,448	Sportswear.
Artistic Weaving Co. (Wkrs)	Clinton, NC	02/25/91	02/13/91	25,449	Printed labels.
Bethany Mfg. Co. (Wkrs)	Garland, TX	02/25/91	01/31/91	25,450	Machine parts.
Callaway Safety Equip. Co., Inc. (Wkrs)	Kalkaska, MI	02/25/91	01/13/91	25,451	Safety equipment.
Central Sportswear (Wkrs)	Lacrosse, VA	02/25/91	02/01/91	25,452	Sportswear.
Champion Spark Plug Co. Pl. 1 (UAW)	Toledo, OH	02/25/91	12/10/90	25,453	Spark plugs.
Champion Spark Plug Co. Pl. 2 (UAW)	Detroit, MI	02/25/91	12/10/90	25,454	Spark plugs.
Chase Garden, Inc. (Wkrs)	Eugene, OR	02/25/91	02/01/91	25,455	Flowers.
Dunecraft Inc. (Wkrs)	Philadelphia, PA	02/25/91	02/11/91	25,456	Clothing.
E.I. du pont de Nemours & Co. (Wkrs)	Jonesboro, AR	02/25/91	02/13/91	25,457	Test packs.
Eagle Bus mfg. (Wkrs)	Brownsville, TX	02/25/91	02/12/91	25,458	Buses.
Ellen C. Inc. (Wkrs)	Elizabeth, NJ	02/25/91	01/21/91	25,459	Garment patterns.
General Motors Corp. (UAW)	Van Nuys, CA	02/25/91	02/14/91	25,460	Auto parts.
Granby Manufacturing (ACTWU)	Granby, MO	02/25/91	01/16/91	25,461	Jeans.
Hart & Cooley, Inc. (Wkrs)	Holland, MI	02/25/91	02/11/91	25,462	Air controls.
Hazlehurst Lingerie (Wkrs)	Hazlehurst, GA	02/25/91	02/14/91	25,463	Sleepwear.
J. Landis Shoe Co. (Wkrs)	Palmyra, PA	02/25/91	02/13/91	25,464	Footwear.
Jantzen, Inc. (Wkrs)	Vancouver, WA	02/25/91	02/11/91	25,465	Sportswear.
Laser Magnetic Storage Intl., Co. (Wkrs)	Colorado Springs, CO	02/25/91	02/10/91	25,466	Cassette tapes.
Lee Co.,—V.F. Corp.	Lebanon, MI	02/25/91	02/11/91	25,467	Jeans.
Mathies Coal Co. (UMWA)	Finleyville, PA	02/25/91	01/24/91	25,468	Coal.
MHP Machines, Inc. (Wkrs)	Buffalo, NY	02/25/91	02/15/91	25,469	Machine tools.
NCR NPD Rancho Bernardo & Calif. (Wkrs)	Columbia, SC	02/25/91	02/11/91	25,470	Computers.
NCR, NPD, USG (Wkrs)	St. Paul, MN	02/25/91	02/11/91	25,471	Computers.
NCR, NPD, USG (Wkrs)	Rancho Bernardo, CA	02/25/91	02/11/91	25,472	Computers.
Niederlander & Sons (Wkrs)	Chehalis, WA	02/25/91	02/14/91	25,473	Cedar shakes.
Oblon Denton (Wkrs)	Fulton, MS	02/25/91	02/12/91	25,474	Sewing.
PAR Technology Corp. (Company)	New Hartford, NY	02/25/91	01/13/91	25,475	Microprocessors.
Riverside Seat Co. (UAW)	Riverside, MO	02/25/91	02/12/91	25,476	Auto seats.
Robvon Backing Ring, Co. (Wkrs)	Avenel, NJ	02/25/91	01/30/91	25,477	Backing rings.
Samuel Blue (Cutting Room) (ILGWU)	New York, NY	02/25/91	01/31/91	25,478	Dresses.
Sanymetal Products, Inc. (USAW)	Cleveland, OH	02/25/91	02/14/91	25,479	Toilet partitions.
Sherman Lumber Co. (Wkrs)	Sherman Station, ME	02/25/91	02/11/91	25,480	Lumber.
Tecumseh Prods., Co. (IBEW)	Somerset, KY	02/25/91	02/07/91	25,481	Compressors.
Trane Co. Div. of Amer. Standard (Wkrs)	Dunmore, PA	02/25/91	02/12/91	25,482	Air & heating products.
Trani Fashions, Inc. (Wkrs)	Jersey City, NJ	02/25/91	02/13/91	25,483	Coats & suits.
W.I. Forest Prod.-Sandpoint Div. (IWA)	Sandpoint, ID	02/25/91	02/15/91	25,484	Lumber.
Wolf Bros. (Wkrs)	New York, NY	02/25/91	02/06/91	25,485	Coats & jackets.
Woodbridge Corp. (UAW)	Riverside, MO	02/25/91	02/11/91	25,486	Foam components.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Ringling Manufacturing Co. (Marietta Sportswear Mfg) (Wrks) (Re-Open).	Marietta, OK.....	11/05/90	11/05/90	25,050	Mens dress slacks.

[FR Doc. 91-5540 Filed 3-7-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-25, 184]

**Rome Turney Radiator Co., Rome, NY;
Negative Determination Regarding
Application for Reconsideration**

By an application dated February 19, 1991, the petitioners requested administrative reconsideration of the subject petition for trade adjustment assistance. The denial notice was signed on January 31, 1991 and published in the *Federal Register* on February 26, 1991 (56 FR 7066).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners provided the names of two major customers who reduced their purchases from Rome Turney and allegedly imported. Further, the petitioners stated that the Department's decision erroneously indicated that the workers produce copper tubing.

In order for a worker group to become certified eligible to apply for adjustment assistance it must meet all three of the Group Eligibility Requirements of the Trade Act—a significant decrease in employment, an absolute decrease in sales or production and an increase in imports "contributing importantly" to worker separations and declines in sales or production. Failure to meet any one of these criteria would prevent the certification of the petitioning worker group.

Investigation findings show that the workers produce helical fin tubing for the air compressor industry. Sales and production of helical fin tubing decreased in 1989 compared to 1988 and increased in the first 10 months of 1990 compared to the same period in 1989.

Further, there were no production worker separations in 1989 or 1990. The three petitioners who were laid off in 1990 performed services and did not produce an article within the meaning of section 223(3) of the Act. Service workers may be certified only if their separations were caused importantly by a reduced demand for their services from a parent firm, or a firm otherwise related by ownership or control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and the reduction must directly relate to the product impacted by imports. These conditions were not met.

The service worker separations in 1990 were the result of a company reorganization.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of February 1991.

Robert O. Deslongchamps,
Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.
[FR Doc. 91-5538 Filed 3-7-91; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-24,867]

**Wonderknight/Scoreboard Galax, VA;
Dismissal of Application for
Reconsideration**

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Wonderknight/Scoreboard, Galax, Virginia. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

**TA-W-24,867; Wonderknight/Scoreboard,
Galax, Virginia (March 1, 1990)**

Signed at Washington, DC this 4th day of March 1991.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-5537 Filed 3-7-91; 8:45 am]
BILLING CODE 4510-30-M

**Federal-State Unemployment
Compensation Program; Extended
Benefits; New Extended Benefit Period
in the State of Alaska**

This notice announces the beginning of a new Extended Benefit Period in the State of Alaska, effective on February 3, 1991, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit

period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the 13-week period ending on January 19, 1991, equals or exceeds 6 percent, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on February 3, 1991. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(c)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(c)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC on February 22, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-5534 Filed 3-7-91; 8:45 am]

BILLING CODE 4510-30-M

Federal-State Unemployment Compensation Program; Extended Benefits; New Extended Benefit Period in the State of Rhode Island

This notice announces the beginning of a new Extended Benefit Period in the State of Rhode Island, effective on February 10, 1991, and remaining in effect for at least 13 weeks after that date.

Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, Individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by part 615 of title 20 of the Code of Federal Regulations (20 CFR part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State for the 13-week period ending on January 26, 1991, equals or exceeds 5 percent and is 20 percent higher than the corresponding 13 week period in the prior two years, so that for that week there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on February 10, 1991. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State

employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(c)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all right under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(c)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC on February 26, 1991.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 91-5535 Filed 3-7-91; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits

determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-

Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Kentucky, KY91-3 (Feb. 22, 1991) p. 319
pp. 320-323
Massachusetts, MA91-1 p. 421
(Feb. 22, 1991) pp. 423-437
Pennsylvania, PA91-21 (Feb. 22, 1991) p. 1107
p. 1109

Volume II

Iowa:

IA91-1 (Feb. 22, 1991) p. 23
p. 27
IA91-2 (Feb. 22, 1991) p. 29
p. 30
IA91-4 (Feb. 22, 1991) p. 37
p. 38
IA91-5 (Feb. 22, 1991) p. 41
pp. 42-45
IA91-13 (Feb. 22, 1991) p. 63
p. 64

Illinois

IL91-12 (Feb. 22, 1991) p. 171
p. 172
IL91-13 (Feb. 22, 1991) p. 183
p. 184
IL91-14 (Feb. 22, 1991) p. 195
pp. 197, 202

Texas

TX91-5 (Feb. 22, 1991) p. 1027
p. 1028
TX91-10 (Feb. 22, 1991) p. 1045
p. 1046
TX91-21 (Feb. 22, 1991) p. 1071
p. 1072
TX91-43 (Feb. 22, 1991) p. 1137
p. 1138
TX91-45 (Feb. 22, 1991) p. 1145

Volume III

Oregon, OR91-1 (Feb. 22, 1991) p. 371
pp. 375-378
pp. 385-386

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes,

arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 5th Day of March 1991.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 91-5599 Filed 3-7-91; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (91-23)]

Revocation of Patent Licenses

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of revocation of patent licenses.

SUMMARY: NASA, during the period of November 29, 1978 to December 8, 1986, granted 148 nonexclusive licenses for U.S. Patent No. 4,052,648 entitled "Power Factor Control System for A.C. Induction Motors." The invention covered by this patent is the basis for a NASA-proprietary technology which consists of devices which match the power consumed by an electrical motor to the load and consequently, reduces energy consumption during low-load conditions. Thirty-three of these licenses have been revoked by NASA for failure to achieve practical application of the licensed invention; for failure to maintain practical application of the licenses invention, or for failure to report their activities under the license. The licenses which have been revoked are listed in the following Table 1 in numerical order:

Table 1

NASA License No. 558, Date of License: November 29, 1979, Martin M. Dapot, Cardinal Control Systems, Inc., 481A Carlisle Drive, Herndon, VA 22070.

NASA License No. 571, Date of License: November 29, 1979, E.R. Mertz, E.R. Mertz, Inc., P.O. Box 235, Garwood, N.J. 07027.

NASA License No. 589, Date of License: December 12, 1979, James W. Kennedy, JMK, Inc., 15 Caldwell, Drive, Amherst, New Hampshire 03031.

NASA License No. 598, Date of License: December 12, 1979, James T. Record, Record Enterprises Limited, 2038

- Kalaniana'ole Ave., Hilo, Hawaii 96720.
- NASA License No. 608, Date of License: December 12, 1979, Carl E. Holmes, Carl E. Holmes, Co., Inc., 107 No. Ave. 64, Los Angeles, CA 90042.
- NASA License No. 619, Date of License: January 31, 1980, Nicholas G. Muskovic, Westinghouse Electric Corporation, 110 Douglas Road, P.O. Box 819, Oldsmar, FL 34677.
- NASA License No. 630, Date of License: March 5, 1980, James R. Voigt, Innovation Company, R #1 Lakeshore Dr., Cleveland, WI 53015.
- NASA License No. 639, Date of License: March 27, 1980, Gerald D. Opfer, Gerald Douglas Opfer, 8724 Via Diego Ct., Lakeside, CA 92040.
- NASA License No. 643, Date of License: April 16, 1980, Raymond J. McAllise, Raymond J. McAllise, 1812 Bruce St., Canal Fulton, Ohio 44614.
- NASA License No. 655, Date of License: May 5, 1980, William Fullerton, IMO Industries Inc., Fincor Electronics Division, 3750 East Market Street, York, PA 17402.
- NASA License No. 656, Date of License: May 6, 1980, Jack C. Chen, De Amertek Corporation, Inc., 815 Mittel Drive, Wood Dale, IL 60191.
- NASA License No. 658, Date of License: May 15, 1980, Lance Kaufman, Gentron Corporation, suite 101, 7345 East Acoma, Scottsdale, AZ 85260.
- NASA License No. 668, Date of License: June 6, 1980, Marshall V. Ledwick, Precision Mfg. Co., Inc., 2159 Valley Street, Dayton, Ohio 45404.
- NASA License No. 676, Date of License: July 25, 1980, Vincent H. Sweeney, Sprague Electric Company, 96 Marshall Street, North Adams, Massachusetts 01247-2411.
- NASA License No. 679, Date of License: July 29, 1980, Allie E. Burgin, A&J Industries, Inc., P.O. Box 7049, Moore, OK 73153-1049.
- NASA License No. 681, Date of License: August 6, 1980, Matthew C. Baum, AMBI-TECH Industries, Inc., 319 Knickerbocker Avenue, Hillsdale, N.J. 07642.
- NASA License No. 687, Date of License: September 3, 1980, Charles Johnson, Avtek Systems, Incorporated, 398 Beach Road, Burlingame, CA 94010.
- NASA License No. 711, Date of License: November 10, 1980, Arnold E. Renner, General Electric Company, room 104, 1501 Roanoke Blvd., Salem, VA 24153.
- NASA License No. 712, Date of License: November 14, 1980, Ellis Waldman, Walco Electric Company, 303 Allens Avenue, Providence, RI 02905.
- NASA License No. 718, Date of License: December 11, 1980, James Rosenfield, Romac Supply Company, 7400 Bandini Blvd., Commerce, CA 90040.
- NASA License No. 719, Date of License: December 11, 1980, Robert D. Barry, Introl Design Inc., 48 North Street, Lockport, NY 14094.
- NASA License No. 720, Date of License: January 6, 1981, Gary K. Kench, Kangaroo Technologies Corp., 601 Gateway Blvd., suite 930, San Francisco, CA 94080.
- NASA License No. 727, Date of License: February 23, 1981, Nathaniel Burks, Burks Electronics Inc., 7853 Balboa Avenue, San Diego, CA 92111.
- NASA License No. 748, Date of License: May 14, 1981, Steve P. Davis, Romac Motor & Control Co., 4256 E. Elwood, Phoenix, AZ 85040.
- NASA License No. 755, Date of License: June 16, 1981, Emil J. Poshadel, Controlled Systems, Inc., 1106 Chamberlain Avenue, Fairmont, West Virginia 26554.
- NASA License No. 757, Date of License: June 29, 1981, C. H. Nowak, American Technology Systems, Inc. (AMTEC), 1478 Southridge Drive, Clearwater, FL 34616.
- NASA License No. 766, Date of License: October 20, 1981, Ronald J. Meetin, Signetics Corporation, 811 East Arques Ave., P.O. Box 3409, Sunnyvale, CA 94088-3409.
- NASA License No. 783, Date of License: April 30, 1981, Robert A. Mammano, Unitrode Corporation, 1700 East Dyer Road, suite 190, Santa Ana, CA 92705.
- NASA License No. 785, Date of License: June 3, 1982, Leven H. Goree, National Communications Electronics, Inc. (NCE), P.O. Box 41735, St. Petersburg, FL 33743.
- NASA License No. 801, Date of License: April 1, 1983, Steven J. Calvin, Jr., WED-CO, 510 E. 7th Street, Rolla, MO 65401.
- NASA License No. 820, Date of License: August 8, 1984, R.L. Ayers, FMC Corporation, 1777 Gears Road, Box 3091, Houston, TX 77001.
- NASA License No. 824, Date of License: April 26, 1985, J.A. Chiang, FCB International Co., 3274 Ettie Street, Oakland, CA 94608.
- NASA License No. 825, Date of License: April 26, 1985, Marion Ringo, Ringo Engineering Services, Inc., 2234 Viola Drive, League City, TX 77573.
- Forty licensees did not respond to three separate letters requesting them to report their activities under their respective license agreements and (2) informing them that failure to respond to the last letter would result in the automatic termination of their licenses. These licenses are listed in the following Table 2 in numerical order:
- Table 2**
- NASA License No. 562, Date of License: November 29, 1979, Robert G. Richardson, Electronic Devices Manufacturing Co., P.O. Box 247, Las Cruces, NM 88001.
- NASA License No. 567, Date of License: November 29, 1979, H.L. Moon, Time Mark Corporation, 11440 E. Pine Street, Tulsa, OK 74116.
- NASA License No. 570, Date of License: June 6, 1980, Robert C. Harris, Harris Circuits Manufacturing Co., 2710 Colley Avenue, Norfolk, VA 23517.
- NASA License No. 580, Date of License: December 12, 1979, Ray W. Beauchea, Cynex Manufacturing Corporation, 28 Sager Place, Hillside, New Jersey 07205.
- NASA License No. 587, Date of License: December 12, 1979, Ronald Newman, Roseth Newman Company, 5851 Nielsen, Paradise, CA 95696.
- NASA License No. 588, Date of License: December 12, 1979, James R. Green, Electronic Energy Systems, 5871 Pittsford-Palmyra Rd., Pittsford, N.Y. 14534.
- NASA License No. 592, Date of License: December 12, 1979, Alan Heimlich, Sun Shine Power Inc., 4534 Fuller St., Santa Clara, CA 95054.
- NASA License No. 612, Date of License: January 15, 1980, Joseph C. Kiall, K.R. Electronics, Inc., 91 Avenel Street, Avenel, N.J. 07001.
- NASA License No. 616, Date of License: January 17, 1980, Leslie Reeves, Eltex, P.O. Box 7807, Atlanta, GA 30357.
- NASA License No. 620, Date of License: February 1, 1980, Stephen D. Pearce, Kybernetics, 14 Malabu Drive, Highland Heights, Kentucky 41076.
- NASA License No. 624, Date of License: February 14, 1980, D.A. Townsend, B&B Electric, 2828 Ford Street, Oakland, CA 94601.
- NASA License No. 627, Date of License: February 26, 1980, Gerald A. Howell, PHASE IN, Rt. 5, Box 25, Philadelphia, 39350.
- NASA License No. 632, Date of License: March 17, 1980, James Swaziek, J. Swaziek & Associates, 1515 N. Highland Ave., Arlington Heights, IL 60004.
- NASA License No. 637, Date of License: March 27, 1980, Robert D. Lapenies, Reuland Electric Company, 17969 East Railroad, St., Industry, CA 91744.
- NASA License No. 640, Date of License: March 27, 1980, Jim Leuba, ElectroShield, Inc., P.O. Box 476, Yellow Springs, Ohio 45387.
- NASA License No. 641, Date of License: March 28, 1980, Gerald H. Servos, Instrumentation and Control Systems, Inc., 520 Interstate Road, Addison, Illinois 60101.
- NASA License No. 624(S), Date of License: October 6, 1980, John W.

Kiowski, Geosource, Inc., P.O. Box 36827, Houston, TX 77036.

NASA License No. 646, Date of License: April 21, 1980, Paul E.J. Nelson, Paul E.J. Nelson Electric, 4712 Coffey Lane, Minneapolis, MN 55406.

NASA License No. 657, Date of License: May 13, 1980, Stuart F. Graydon, Rebel Electronics Inc., 3172 Mobile Hwy, Montgomery, AL 36108.

NASA License No. 665, Date of License: June 3, 1980, W. David Grammer, Radgra Energy Systems, Inc., 4424 W. Pico Blvd., Los Angeles, CA 90019.

NASA License No. 674, Date of License: July 22, 1980, John Paek, PAK Manufacturing, Inc., 1651 State St., DeKalb, IL 60115.

NASA License No. 675, Date of License: July 23, 1980, James Foust, Jiro Electronics, Inc., P.O. Box 2707, Rochester, N.Y. 14626.

NASA License No. 689, Date of License: August 25, 1980, August Mirand, Protech, 6133 Carpintero Ave., Lakewood, CA 90713.

NASA License No. 699, Date of License: October 24, 1980, James L. Gaymor, Jaygay Distributors, 99 Winthrop Avenue, Elmsford, N.Y. 10523.

NASA License No. 715, Date of License: November 20, 1989, Fred A. Werkmeister, Beach Enterprises, 7470 North 79th Street, Milwaukee, WI 53223.

NASA License No. 716, Date of License: December 3, 1980, James R. Hudson, Hudson Metals, Inc., P.O. Box 4108, 500 Green Cove Road, SE, Huntsville, AL 35802.

NASA License No. 721, Date of License: January 8, 1981, Ramesh Trivedi, SNR Corporation, P.O. Box 221, Addison, IL 60101.

NASA License No. 735, Date of License: March 25, 1981, Samuel Weisberger, Energy Conservation Systems of America, Inc., (Deleware Corp), 4608 15th Avenue, Brooklyn, N.Y. 11219.

NASA License No. 749, Date of License: May 14, 1981, Ed Fonda, E.R. Consultants, Inc., 1690 Nilda Avenue, Mt. View, CA 94040.

NASA License No. 751, Date of License: May 14, 1981, Jim Carter, Rodcar Electronic Sales, 2720 Biloxi Lane, Mesquite, Texas 75150.

NASA License No. 769, Date of License: January 29, 1982, Robert N. Wagner, North American Power Corporation, P.O. Box 13094, Fresno, CA 93794.

NASA License No. 782, Date of License: June 17, 1982, Herbert Gray, Huntsville United Research & Technology, Inc., P.O. Box 3037, Huntsville, AL 35810.

NASA License No. 787, Date of License: July 20, 1982, Howard G. Anson, BASCO Electronics Corporation, 15823 35th NE, Seattle, WA 98155.

NASA License No. 788, Date of License: August 2, 1982, T.L. Bruno, Anchor Maritime Electronics Company, 1836 N. 5th Pl., Port of Hueneme, CA 93041.

NASA License No. 790, Date of License: September 15, 1982, Joseph R. Nagy, N. B. Industries, Inc., 610 West Olney Avenue, Philadelphia, PA 19120.

NASA License No. 791, Date of License: Sept. 27, 1982, Robert Meister, CORR. IND., P.O. Box A-E, San Luis Obispo, CA 93404.

NASA License No. 800, Date of License: March 29, 1983, M. Jayaram, OMNITRONICS, Inc., 1461 Castlewood Drive, Wheaton, IL 60187.

NASA License No. 804, Date of License: June 1, 1983, Dr. Barry P. Keane, Inotec Incorporated, P.O. Box 1587, Clemson, SC 29631.

NASA License No. 815, Date of License: May 3, 1984, Leland B. Whitney, Conroy and Associates, Route #1, Box 592, Danbury, Wisconsin 54830.

NASA License No. 832, Date of License: November 3, 1986, Stephen S. Israel, Quality Solar Systems of Florida, Inc., 632 Florida Central Parkway, Longwood, Florida 32750.

NASA was unable to contact by mail 63 licensees because NASA did not have current mailing address and the U.S. Postal Service did not have a forwarding address. These licenses are listed in the following Table 3 in numerical order:

Table 3

NASA License No. 561, Date of License: November 29, 1979, Robert A. Swanson, EMSI, Inc., 7417 Bush Lake Road, Edina, MN 55435.

NASA License No. 563, Date of License: November 29, 1979, Michael R. McWilliams, M-C Products Division of Material Control, Inc., 7720 East Redfield Road, suite 2, Scottsdale, AZ 85260.

NASA License No. 565, Date of License: November 29, 1979, Enrigue E. Bianchi, Scientific Energy Company (SCENCO), P.O. Box 4640, Huntsville, AL 35802.

NASA License No. 566, Date of License: November 29, 1979, W. Hynes, Ridgeway Electronics, Inc., 38 Powhatton Street, Augusta, ME 04330.

NASA License No. 568, Date of License: November 29, 1979, Gene Collins, Energy Controls Co., P.O. Box 41423, Crosstown Station, Memphis, TN 38104.

NASA License No. 569, Date of License: November 29, 1979, Joseph C. Barbeau, United States Solar Industries, Inc., 5600 Roswell Road, NE, Suite 280, Prado North, Atlanta, GA 30342.

NASA License No. 573, Date of License: November 29, 1979, Bruce W. Buchman, Lanman Enterprises, 4696 South Lincoln Road, Macedon, NY 14502.

NASA License No. 575, Date of License: November 29, 1979, Richard L. Saunders, Jr., Southeastern Research and Development Company, P.O. Box 47081, Atlanta, GA 30362.

NASA License No. 577, Date of License: December 12, 1979, Harry C. Hopkins, Hopkins International Company, 18 South Central Avenue, Elmsford, New York 10523.

NASA License No. 579, Date of License: December 12, 1979, Steven Tsengas, EnerCon, Inc., 30048 Lakeland Blvd., Wickliffe, OH 44092.

NASA License No. 583, Date of License: December 12, 1979, Gerald J. Byrnes, Universal Electronics Systems, Inc., 525-B Pickwick Road, P.O. Box #727, Savannah, TN 38372.

NASA License No. 586, Date of License: December 12, 1979, Ken Prescher, Westomatic Manufacturing Co., P.O. Box 8337, Tampa, FL 33674.

NASA License No. 590, Date of License: December 12, 1979, Dalton L. Bacus, Advanced Assembly Services, 433 Magnolia Ave., Glendale, CA 91204.

NASA License No. 591, Date of License: December 12, 1979, Robert A. Suding, Merrimac Engineering Inc., 10 S. Island Ave., Batavia, IL 60510.

NASA License No. 600, Date of License: December 12, 1979, John H. Stokes, Energy Technology, Inc., P.O. Box Q, Las Cruces, NM 88001.

NASA License No. 601, Date of License: December 12, 1979, Robert A. Casterline, Ecolotronics, Inc., Dundee Center—Sans Souci Parkway, Hanover Township, Wilkes-Barre, PA 18702.

NASA License No. 603, Date of License: December 12, 1979, R.C. Davison, FSI, 1894 Commercenter, W. #105, San Bernardino, CA 92408.

NASA License No. 604, Date of License: December 12, 1979, Aron Levy, Technology Dynamics Inc., 91 Carver Ave., Westwood, New Jersey 07675.

NASA License No. 606, Date of License: December 12, 1979, Donald Wienke, Solid State Relays, Inc., 213 Eisenhower Lane South, Lombard, IL 60148.

NASA License No. 614, Date of License: January 15, 1980, Joseph B. Beach, Bell Audio Systems, Inc., 994 Freeway Dr. North, Columbus, Ohio 43229.

NASA License No. 615, Date of License: January 17, 1980, Steve Hodge, Control Electronics Company, Inc., 11035 Harry Hines Suite 214, Dallas, Texas 75229.

- NASA License No. 621, Date of License: February 5, 1980, Paul A. Gilliland, G&G Industries, R.D. #1, Ephrat, PA 17522.
- NASA License No. 626, Date of License: February 26, 1980, William E. Shaw, Industrial Electrical Controls Corporation, 7500 NE 16th Avenue, Suite #A, Vancouver, Washington 98665.
- NASA License No. 628, Date of License: February 26, 1980, Robert B. Danek, Telephonic, Inc., 1330 San Pedro NE., suite 108, Albuquerque, New Mexico 87110.
- NASA License No. 631, Date of License: March 11, 1980, Glenn C. Hook, Application Engineering Corporation, 850 Pratt Blvd., Elk Grove Village, IL 60007.
- NASA License No. 638, Date of License: March 27, 1980, H. Edward Sulger, Jr., Dynamic Instrument Corp., 933 L.I. Motor Parkway, Hauppauge, N.Y. 11787.
- NASA License No. 647, Date of License: April 21, 1989, Angel Nunez, AMEX International Corp., 2700 Broadway—suite 8, New York, New York 10025.
- NASA License No. 648, Date of License: April 22, 1980, Barry H. Wiley, Tympanium Corporation, 116 Cummings Park, Woburn, Massachusetts 01801.
- NASA License No. 649, Date of License: April 29, 1980, G. Ruben Jauregui, Western Pacifica International, 12028 Vose Street, North Hollywood, CA 91605.
- NASA License No. 659, Date of License: May 15, 1980, Priscilla Sananman, Preferred Electric Power Systems, Inc., 11 Newton Place, Hauppauge, New York 11787.
- NASA License No. 662, Date of License: May 29, 1980, Curtis Vancura, Future Tech, P.O. Box 10629, Phoenix, Arizona 85064.
- NASA License No. 663, Date of License: May 29, 1980, Lawrence R. McSorley, Custom Energy Control, 404 So. 30th Street, Heath, Ohio 43055.
- NASA License No. 666, Date of License: June 6, 1980, Joe Gorman, Joe Gorman Electric DBA Computer Power Co., 23731 Mariano Street, Woodland Hills, CA 91346.
- NASA License No. 669, Date of License: June 24, 1980, Shalli Kumar, Autotech Corporation, 904 Westwood Avenue, Addison, IL 60101.
- NASA License No. 673, Date of License: July 18, 1980, O.B. Nelson, O.B. Nelson, Inc., Box 1119, Forney, Texas 75126.
- NASA License No. 677, Date of License: July 25, 1980, Howard Moskowitz, Kilo Watt-ch Dog, Inc., 150 Broadhollow Road, Melville, N.Y. 11746.
- NASA License No. 678, Date of License: July 29, 1980, Joseph Emergy, Margaux Controls, Inc., 2302 Walsh Avenue, Santa Clara, CA 95050.
- NASA License No. 696, Date of License: October 14, 1980, Louis E. Bridges, Jr., Innovated Systems, Inc., 4200 Gus Thomasson, #114, Mesquite, Texas 75150.
- NASA License No. 697, Date of License: October 14, 1980, Gary B. Lundber, Position Control Systems, Inc., 744 So. 100 E. suite 4, Provo, Utah 84601.
- NASA License No. 725, Date of License: February 6, 1981, Lawrence Kozlowski, Syracuse Electronics Corporation, P.O. Box 566, Syracuse, New York 13201.
- NASA License No. 726, Date of License: February 23, 1981, Roger Shemf, Rova Products Corp., 7223 Sycamore Street, City of Commerce, CA 90040.
- NASA License No. 731, Date of License: March 19, 1981, R.W. Rosen, RW Enterprises, 1455 Copley Road, Akron, Ohio 44320.
- NASA License No. 732, Date of License: March 19, 1981, G.J. McCaul, Bridgeport Machines, suite B1 Benson East, Jenkintown, PA 19046.
- NASA License No. 741, Date of License: April 21, 1981, Ladies and Gentlemen, Electronics Plus, 22730 Rodax Street, Canoga Park, CA 91304.
- NASA License No. 742, Date of License: April 21, 1981, Alder L. Dudley, Electronic Assembly, P.O. Box 135, Medford, Mass. 02155.
- NASA License No. 750, Date of License: May 14, 1981, Palmer B. Ford, Energy Masters, Incorporated, 10031 Lampson Avenue, Garden Grove, CA 92640.
- NASA License No. 753, Date of License: June 16, 1981, C.R. Edmonds, Anderson-Edmonds, Inc., 2170 Commerce Avenue, Unit #C, Concord, CA 94520.
- NASA License No. 758, Date of License: June 30, 1981, A. Mark Delz, AMD Electronic Services, 3815 'B' Wild Rye Trail, San Angelo, TX 76901.
- NASA License No. 767, Date of License: November 4, 1981, Martin K. Mason, Electrical South, Inc., Control Products Group Div., P.O. Box 22016, Greensboro, North Carolina 27420.
- NASA License No. 770, Date of License: February 3, 1982, Edward M. Demas, Electric Regulator Corporation, P.O. Box 698, Norwalk, Connecticut 06852.
- NASA License No. 774, Date of License: December 28, 1982, James L. Day, Service Technology, Inc., P.O. Box 476, Gastonia, N.C. 28052.
- NASA License No. 776, Date of License: March 4, 1982, James A. Way, Karbo Electronics, Inc., 17431 Electronics, Inc., Morgan Hill, CA 95037.
- NASA License No. 777, Date of License: March 4, 1982, James D. Evans, Haydac, Inc., 100 E. NASA Road I, Ste. 308, Webster, TX 77598.
- NASA License No. 778, Date of License: March 4, 1982, George Mays, M Square and Associates, P.O. Box 7000-407, Redondo Beach, CA 90277.
- NASA License No. 781, Date of License: March 26, 1982, Ron Stephenson, Conservation and Safety Control, Inc., P.O. Box 11460, Odessa, Texas 79760.
- NASA License No. 793, Date of License: November 1, 1982, Mho Raeissi, Techno Engineering, P.O. Box 15193, San Diego, CA 92115.
- NASA License No. 794, Date of License: November 1, 1982, P.A. Betancourt, Associated Consultants, Inc., P.O. Box 490428, Miami, FL 33149.
- NASA License No. 795, Date of License: November 18, 1982, James E. Bruce, Century Nex Corporation, 1340 Main Street, Ste. E., Ramona, CA 92065.
- NASA License No. 797, Date of License: March 3, 1983, Akraej Sumatra, Energy Conservation Enterprise, 12025 Foster Road, Unit 9, Norwalk, CA 90650.
- NASA License No. 807, Date of License: August 23, 1983, Steven A. Schonfeld, RAP Enterprises, 1740 E. Gary Ave., suite 107, Santa Ana, CA 92705.
- NASA License No. 808, Date of License: November 3, 1983, Donald E. Hirsch, Hirsch Manufacturing Company, Inc., 12227 Darby Avenue, Northridge, CA 91326.
- NASA License No. 814, Date of License: March 22, 1984, Johathan Lundquist, Inc. Technologies, 384 E. State, suite C., Pleasant Grove, UT 84062.
- NASA License No. 833, Date of License: December 8, 1986, Robert A. Nimmo, U.S. Guardian Motor Controls, Inc., P.O. Box 398, Whitewater, Wisconsin 53190.

The above licensees are hereby notified that their licenses are now revoked. These licensees may appeal the decision to revoke in accordance with the NASA Patent Licensing Regulations (14 CFR 1245.200 et seq.). Appeals are governed by § 1245.210 and 1245.211 of the Licensing Regulations. The text of these sections follows:

Section 1245.210 Modification and Termination of Licenses

Before modifying or terminating a license, other than by mutual agreement, NASA shall furnish the licensee and any sublicensee of record a written notice of intention to modify or terminate the license, and the licensee and any sublicensee shall be allowed 30 days after such notice to remedy any breach of the license or show cause why the license should not be modified or terminated.

Section 1245.211 Appeals

(a) The following parties may appeal to the NASA Administrator or designee any decision or determination concerning the grant, denial, interpretation, modification, or termination of a license:

(1) A person whose application for a license has been denied;

(2) A licensee whose license has been modified or terminated, in whole or in part; or (3) A person who timely filed a written objection in response to the notice required by §§ 1245.206(a)(1)(iii)(A) or 1245.206(b)(1)(i) and who can demonstrate to the satisfaction of NASA that such person may be damaged by the Agency action.

(b) Written notice of appeal must be filed within 30 days (or such other time as may be authorized for good cause shown) after receiving notice of the adverse decision or determination; including, an adverse decision following the request for reconsideration under § 1245.208(c). The notice of appeal, along with all supporting documentation should be addressed to the Administrator, National Aeronautics and Space Administration, Washington, DC 20546. Should the appeal raise a genuine dispute over material facts, fact-finding will be conducted by the NASA Inventions and Contributions Board. The person filing the appeal shall be afforded an opportunity to be heard and to offer evidence in support of the appeal. The Chairperson of the Inventions and Contributions Board shall prepare written findings of fact and transmit them to the Administrator or designee. The decision on the appeal shall be made by the NASA Administrator or designee. There is no further right of administrative appeal from the decision of the Administrator or designee.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 453-2430.

Dated: February 26, 1991.

Edward A. Frankle,
General Counsel.

[FR Doc. 91-5484 Filed 3-7-91; 8:45 am]

BILLING CODE 7510-01-M

[Notice 91-24]

Intent to Grant an Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant a patent license.

SUMMARY: NASA hereby gives notice of intent to grant Green Technologies, Inc., of Boulder, Colorado, an exclusive, royalty-bearing, revocable license to practice NASA's Power Factor Controller technology. This technology consists of devices which matches the power consumed by electrical motor to the load and, consequently, reduces energy consumption during low-load conditions. The technology is protected by nine United States patents and by a number of foreign patents which correspond to the United States patents. The United States patents, in numerical order, are: U.S. Patent No. 4,052,648, entitled "Power Factor Control System for A.C. Induction Motors"; U.S. Patent No. 4,266,177, entitled "Power Factor Control System for A.C. Induction Motors"; U.S. Patent No. 4,404,511, entitled "Motor Power Factor Controller with a Reduced Voltage Starter"; U.S. Patent No. 4,417,190, entitled "Control System for an Induction Motor with Energy Recovery"; U.S. Patent No. 4,426,614, entitled "Pulsed Thyristor Trigger Control Circuit Continued"; U.S. Patent No. 4,433,276, entitled "Three-Phase Power Factor Controller"; U.S. Patent No. 4,439,718, entitled "Motor Power Control Circuit for A.C. Induction Motors"; U.S. Patent No. 4,459,528, entitled "Phase Detector for Three-Phase Power Factor Controller"; U.S. Patent No. 4,469,998, entitled "Three-Phase Power Factor Controller with Individual EMF Sensing". The proposed patent license will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with the NASA Patent Licensing Regulations, 14 CFR part 1245.200 *et seq.* NASA will negotiate the final terms and conditions and grant the exclusive license, unless within 60 days of the date of this notice, the Director of Patent Licensing receives written objections to the grant, together with any supporting documentation. The Director of Patent Licensing will review all written objections to the grant and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the license.

DATES: Comments to this notice must be received by May 7, 1991.

ADDRESSES: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff (202) 453-2430.

Dated: February 26, 1991.

Edward A. Frankle

General Counsel

[FR Doc. 91-5485 Filed 3-7-91; 8:45 am]

BILLING CODE 7510-01-M

National Labor Relations Board

Appointments of Individuals to Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the *Federal Register*. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1989 and ending September 30, 1990.

Name and Title

Robert E. Allen—Associate General Counsel, Advice

Harold J. Datz—Chief Counsel to Board Member

Joseph E. DeSio—Associate General Counsel, Operations Management

Frederick Freilicher—Chief Counsel to Board Member

D. Randall Frye—Acting Deputy General Counsel

John E. Higgins—Solicitor

Susan Holik—Chief Counsel to Board Member

Gloria J. Joseph—Acting Director of Administration

Joseph E. Moore—Deputy Executive Secretary

S.F. Timothy Mullen—Deputy Director of Administration

Anne G. Purcell—Chief Counsel to Board Member

W. Garrett Stack—Deputy Associate General Counsel, Operations Management

Elinor H. Stillman—Chief Counsel to the Chairman

Berton B. Subrin—Director, Office of Representation Appeals

John C. Truesdale—Executive Secretary

Melvin J. Welles—Chief Administrative Law Judge

Dated: Washington, DC, February 15, 1991.

By Direction of the Board.

Joseph E. Moore,

Acting Executive Secretary.

[FR Doc. 91-5447 Filed 3-7-91; 8:45 am]

BILLING CODE 7545-01-M

NATIONAL SCIENCE FOUNDATION**Cultural Anthropology Advisory Panel; Meeting**

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Cultural Anthropology.

Date and time: March 21 & 22, 1991, 9 a.m.-5 p.m. each day.

Place: Hotel Lombardy, 2019 I Street, NW., suite 1111, Washington, DC 20550.

Type of meeting: Closed.

Contact person: Dr. Stuart Plattner, Program Director, Cultural Anthropology, room 320, National Science Foundation, Washington, DC 20550. Telephone (202) 357-7804.

Purpose of meeting: To provide advice and recommendations concerning support for research in cultural anthropology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91-5476 Filed 3-7-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panels; Meetings

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting(s) to be held at 1800 G Street, NW., Washington, DC 20550 (except where otherwise indicated).

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to provide

advice and recommendations to the National Science Foundation concerning the support of research, engineering, and science education. The agenda is to review and evaluate proposals as part of the selection process for awards. The entire meeting is closed to the public because the panels are reviewing proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), the Government in the Sunshine Act.

CONTACT PERSON: M. Rebecca Winkler, Committee Management Officer, room 208, 357-7363.

Dated: March 4, 1991.

M. Rebecca Winkler,
Committee Management Officer.

Committee name	Street address	Room	Times	Date(s)
Special Emphasis Panel in Institute of Advanced Study—Mathematical Sciences.	Princeton, NJ		8:30am-5:00pm	03/25/91
<i>Agenda:</i> Site Visit			8:30am-5:00pm	03/26/91

[FR Doc. 91-5474 Filed 3-7-91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Research Initiation and Improvement; Meeting

The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Research Initiation and Improvement.

Date and time: March 25, 1991: 8:30 a.m.-5:30 p.m.; March 26, 1991: 8:30 a.m.-3:30 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 1242, Washington, DC 20550.

Type of meeting: Closed.

Contact person: Lola E. Rogers, Acting Program Director, VPW, National Science Foundation, room 1225. Telephone: 202/357-7456.

Purpose: Proposal review and discussion.

Agenda: To evaluate and recommend for funding competitive proposals submitted for the FY 1991 VPM competition.

Dated: March 4, 1991.

M. Rebecca Winkler,
Committee Management Officer.

[FR Doc. 91-5477 Filed 3-7-91; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION**Barnett Industrial X-Ray; Establishment of Atomic Safety and Licensing Board**

[Materials License No. 35-26953-01; Docket No. 30-30691-CivP; ASLBP No. 91-636-03-CivP]

Pursuant to delegation by the Commission dated December 29, 1972, published in the *Federal Register*, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

Barnett Industrial X-Ray

Materials License No. 35-26953-01
EA 90-102

This Board is being established pursuant to the request of the Licensee for an enforcement hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated December 31, 1990, entitled "Order Imposing Civil Monetary Penalty" (58 FR 901, January 9, 1991).

An Order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Charles Bechhoefer, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

George C. Anderson, 7719 Ridge Drive, NE, Seattle, Washington 98115

Lester S. Rubenstein, 14540 N. Chalk Creek Drive, Oro Valley, Arizona 85737.

Issued at Bethesda, Maryland, this 28th day of February, 1991.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91-5556 Filed 3-7-91; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-54-OLA (Decommissioning) ASLBP No. 91-637-08-OLA]

Cintichem, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the *Federal Register*, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as

amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Cintichem Inc.

Research Reactor

Facility License No. R-81

This Board is being established pursuant to a notice published by the Commission on January 14, 1991 in the *Federal Register* (56 FR 1422) entitled, "Proposed Issuance of Orders Authorizing Disposition of Component Parts and Terminating Facility License." The first of the proposed orders would be issued following the Commission's review and approval of the licensee's detailed plan for decontamination of the facility and disposal of the radioactive components, or some alternate disposition plan for the facility. This Order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second Order terminating the facility license and any further NRC jurisdiction over the facility.

The Board is comprised of the following administrative judges:

John H. Frye, III, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

David R. Schink, Department of Oceanography, Texas A&M University, College Station, Texas 77843.

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980).

Issued at Bethesda, Maryland, this 28th day of February 1991.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 91-5557 Filed 3-7-91; 8:45 am]

BILLING CODE 7590-01-M

PEACE CORPS

Information Collection Request Under OMB Review

AGENCY: Peace Corps.

SUMMARY: In compliance with the Paperwork Reduction Act [44 U.S.C. 3502 *et seq.*], this notice announces that the information collection request abstracted below has been forwarded to the Office of Management and Budget for review and is available for public review and comment. A copy of the information collection form may be obtained from Mr. Michael Berning, Office of Recruitment, Peace Corps, 1990 K Street, NW., Washington, DC 20526. Mr. Berning may be reached at 202-606-3780. Comments on this information collection should be addressed to Mr. Marshall Mills, Desk Officer, Office of Management and Budget, Washington, DC 20503.

Information Collection Abstract

Title: Request for Information Card.
Need for and use of the information: This card is a way for citizens to let Peace Corps know they wish information on the Agency and its programs.

Respondents: Citizens interested in receiving information about the Peace Corps.

Burden on the public:

- a. Annual reporting burden: 2187 hours.
- b. Annual recordkeeping burden: 0 hours.
- c. Estimated average burden per response: 1.75 minutes.
- d. Frequency of response: On occasion.
- e. Estimated number of likely respondents: 75,000.

This notice is issued in Washington, DC on December 15, 1990.

Collins Reynolds,

Associate Director for Management.

[FR Doc. 91-5533 Filed 3-7-91; 8:45 am]

BILLING CODE 6051-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29929; International Series Release No. 236; File No. SR-AMEX-91-01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Listing Warrants on the EURO TOP-100 Index

Pursuant to section 9(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 4, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission

("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to approve for listing and trading under section 106 of the Amex Company Guide warrants on the Euro Top-100 Index ("E100 Index" or "Index"), a board-based stock market index based on the performance of 100 leading European companies.¹

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Under Section 106 (Currency and Index Warrants) of the Amex Company Guide, the Exchange may approve for listing index warrants based on foreign and domestic market indexes. The Amex is proposing to list index warrants based on the E100 Index.

Such warrant issues will conform to the listing guidelines under section 106, which provide that (1) the issuer shall have assets in excess of \$100,000,000 and otherwise substantially exceed size

¹ On February 22, 1991, the Amex amended its proposal to revise the criteria for including countries in the Index and calculating country weightings. These changes are reflected in this notice. Moreover, the Amex previously has submitted a proposal to list and trade options on the E100 Index, and the Commission currently is reviewing this Amex proposal. For additional information relating to E100 component stocks and E100 Index calculation, see File No. SR-Amex-90-25.

and earnings requirements in section 101(a) of the Company Guide; (2) the term of the warrants shall be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of \$4,000,000.

E100 index warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the E100 has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the E100 has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Euro Top-100 Index

Developed and maintained by the European Options Exchange ("EOE"), E100 is a weighted index denominated in European Currency Units ("ECUs") and based on the value of the shares of 100 European companies. The E100 Index was designed to measure the collective performance of the most actively traded stocks on the major European stock exchanges in the United Kingdom, France, Germany, Italy, Spain, Belgium, The Netherlands, Switzerland and Sweden.

To be eligible for inclusion in the Index, a country must be a European member of the Organization of Economic Cooperation and Development ("OECD").² Furthermore, a country's exchange(s) must have a total market capitalization of at least 2.5% of the aggregate market capitalization of the exchanges in all the countries in the Index.

Each country which meets these criteria is represented in the Index based on its total market capitalization adjusted to reflect its gross national product ("GNP"). A country's base weighting in the Index is 90% dependent on its market capitalization and 10% dependent on its GNP.

² OECD is an organization of the 24 free market democratic countries in North America, Western Europe and the Pacific, formed to promote world trade and the world economy.

As of December 31, 1989, the weightings for each country were: United Kingdom, 22%; Germany, 15%; France, 15%; Switzerland, 10%; Italy, 10%; The Netherlands, 8%; Sweden, 8%; Spain, 8% and Belgium, 4%. Additional information relating to E100 component stocks and Index calculation is contained in the Amex's proposal to trade options on the E100 (SR-Amex-90-25).

The Amex has adopted suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts. Rule 411, Commentary .02 applies the options suitability standard in Rule 923 to recommendations regarding index warrants; and the Amex recommends that index warrants be sold only to options-approved accounts. Rule 421, Commentary .02 requires a Senior Registered Options Principal or a Registered Options Principal to approve and initial a discretionary order in index warrants on the day entered. In addition, the Amex, prior to the commencement of trading, will distribute a circular to its membership calling attention to specific risks associated with warrants on the E100.

Surveillance Agreements

The Exchange has market surveillance agreements in effect with several of the marketplaces where Index component stocks trade. Agreements with additional countries whose stocks are included in the E100 are being sought, as is expansion of certain of the existing agreements.

The Exchange currently is a party to a broad information sharing agreement with The Securities Association in the United Kingdom ("TSA"). That agreement enables the Exchange, for purposes of carrying out its regulatory responsibilities, to obtain from the records of TSA and TSA members, information relating to securities traded on the Amex or securities underlying derivative instruments traded on the Amex. This would provide the Exchange with an effective means of surveilling the U.K. E100 component securities which currently constitute 22% of the Index.

The Exchange also has in place an agreement with the Societe des Bourses Francaises that provides for the sharing of surveillance information relating to, among other things, securities which are traded on French stock exchanges and underlie derivative instruments traded on the Amex.

Additionally, the Exchange is a party to an information sharing agreement with the Frankfurt Stock Exchange. Since that agreement focuses on the

exchange of market surveillance information regarding the trading of warrants on the DAX Index, the Exchange is undertaking to discuss with the Frankfurt Stock Exchange the expansion of the existing agreement to include data for use in connection with its surveillance of the E100 German components, all of which are components of the DAX.

The Exchange is also engaging in discussions with other foreign exchanges and hopes to establish information sharing agreements with marketplaces on which other E100 components trade.

(2) Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by March 29, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 1, 1991.

Jonathan G. Katz,
Secretary.

[FR Doc 91-5456 Filed 3-7-91; 91-8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28919; File No. SR-BSE-09-01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Specialist Performance Evaluation Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 7, 1991, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and this order grants accelerated approval of the BSE's proposed rule change.¹

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to renew the operation of the Exchange's Specialist Performance Evaluation Program ("SPEP") for a one-year period.²

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The BSE originally filed its SPEP pilot program with the Commission on September 28, 1984 (File No. SR-BSE-84-04). Because the Commission still is reviewing the Exchange's proposal, the BSE is submitting this filing to request that the current pilot program be renewed for a one-year period in order to enable the Exchange to maintain the program, pending permanent approval by the Commission.

Currently, the Exchange's specialist performance evaluation program consists of a Specialist Performance Evaluation Questionnaire ("questionnaire") which is administered every four months and is completed by floor brokers, specialists acting as floor brokers in their non-specialty stocks and certain other qualifying clerks.³ The

¹ On January 30, 1990, the Commission granted accelerated approval to the BSE's proposal to renew the SPEP pilot program for a one-year period, ending on January 31, 1991 [see Securities Exchange Act Release No. 27656 (January 30, 1990), 55 FR 4296 (February 7, 1990)]. Prior to January 30, 1990, the Commission last approved the Exchange's SPEP pilot on October 6, 1988 for a one-year period, ending on October 6, 1989 [see Securities Exchange Act Release No. 28162 (October 6, 1988), 53 FR 40301 (October 14, 1988)].

² The BSE's SPEP formerly included a second performance measure, a quotation evaluation score, which assessed the quality of quotations disseminated by specialists through the Consolidated Quotation System. The BSE eliminated quotation evaluations because the BSE believed that the measure was flawed and because the BSE intended to develop new objective performance criteria related to BEACON, the

questionnaire currently contains 12 questions, 8 of which are weighted.⁴ Each respondent is requested to grade a specialist's performance in the area addressed by each question. Further, the Exchange uses a nine point grading scale to rate specialist performance.

Specialist units whose performance falls below certain threshold levels of acceptable performance are subject to performance improvement actions. These actions are triggered in the event a specialist unit receives (1) an overall average grade below 4.5 on the questionnaire, or (2) an average grade below 4.5 for one question for two of three consecutive evaluation periods. Specialist units coming under one of these two categories are requested to meet informally with a Performance Improvement Subcommittee ("Subcommittee"). In this meeting, the Subcommittee discusses the unit's poor performance and possible measures to improve the specialist's performance during the subsequent evaluation period. The meeting is voluntary and a specialist unit may elect not to attend.

A mandatory meeting with the Market Performance Committee ("MPC") is required in the event a specialist receives an overall grade below 4.5 on the questionnaire for two of three successive evaluation periods, or if the unit receives a grade of 4.5 on one question in one out of two evaluation periods subsequent to meeting the conditions for an informal review by the Subcommittee.

The MPC may impose the following sanctions upon a unit following a mandatory hearing: (1) Withdraw Exchange approval of a member's registration as a specialist in one or more stocks, (2) Reduce the percentage of stocks that may be protected by a specialist when new specialist books are allocated (all specialists are obligated to reserve 10% of their specialty stocks for acquisition by new specialists developing a book), or (3) Suspend the specialist's trading account. BSE Rules also permit the MPC to impose any other performance improvement actions it deems appropriate to improve a unit's performance.⁵

Exchange's automated order-routing and communication system, to replace quotation evaluations. In its order approving the elimination of the quotation evaluation score, the Commission stated that it expected the BSE to submit new objective measures of market making performance as soon as possible. See Securities Exchange Act Release No. 28162, *supra* note 2.

⁴ Telephone conversation between Karen Aluise and Mary Revell, February 25, 1991.

⁵ For example, questionnaire results are one of several factors considered by the Exchange in

¹ The BSE requested that the Commission grant accelerated approval to the proposal. See letter from Karen A. Aluise, Regulatory Review Specialist, BSE, to Mary Revell, Branch Chief, Division of Market Regulation, SEC, dated February 8, 1991.

Continued

Statutory Basis

The basis under the Act for the proposed rule change is Section 6(b)(5),⁶ in that the questionnaire results weigh heavily in stock allocation decisions and as a result specialists are encouraged to improve their market quality and administrative duties, thereby promoting just and equitable principles of trade and aiding in the perfection of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No SR-BSE-91-01 and should be submitted by March 29, 1991.

IV. Conclusion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

exchange, and, in particular, the requirements of Section 6 of the Act⁷ and the rules and regulations thereunder. In this regard, the Commission notes that the extension of the pilot furthers the protection of investors and the public interest because it allows for the continued evaluation of specialist performance while the Commission considers the Exchange's request for permanent approval of the SPEP.⁸

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the *Federal Register*. The Commission believes that it is necessary to renew the pilot program's operation while the Commission considers the Exchange's proposal to approve the pilot program on a permanent basis so that the program can continue on an uninterrupted basis. The Commission believes, therefore, that accelerated effectiveness of the renewal of the pilot program for an additional one-year term is appropriate. The Commission also notes that the substance of the proposal was published in the *Federal Register* previously and no comments on the proposal were received by the Commission.⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹⁰ that the proposed rule change be, and hereby is, approved for a one year period ending on February 26, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Dated: February 26, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5458 Filed 3-7-91; 8:45 am]

BILLING CODE 8010-01-M

⁷ 15 U.S.C. 78f (1988).

⁸ The Commission reiterates the request stated in Securities Exchange Act Release No. 26162, *supra* note 2, that the BSE submit objective measures of market making performance to the Commission as soon as possible pursuant to Section 19(b) of the Act. The Commission also requests that the BSE submit a report to the Commission describing its experience with the pilot by April 30, 1991. The report should detail, for the four quarters in 1990, questionnaire results for all specialist units, as well as any actions taken by the Subcommittee or MPC in response to the scores. Any modifications to the current questionnaire also should be submitted to the Commission as a proposed rule change pursuant to Section 19(b) of the Act.

⁹ See Securities Exchange Act Release No. 22993 (March 10, 1988), 50 FR 8928 (March 14, 1988).

¹⁰ 15 U.S.C. 78s(b)(2) (1988).

¹¹ 17 CFR 200.30-3(a)(12) (1990).

[Release No. 34-28932; File No. SR-NASD-90-67]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Schedule H of the By-Laws

The National Association of Securities Dealers, Inc. ("NASD") submitted on November 30, 1990, a proposed rule change pursuant to section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4² thereunder to amend Schedule H of the Association's By-Laws to eliminate the current reporting thresholds of \$10,000 and 50,000 shares, so that the reporting requirements of Schedule H will apply to each non-NASDAQ security traded by members. The proposed amendments also clarify which transactions in NASDAQ and listed securities are required to be reported pursuant to Schedule H. Notice of the filing and the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 28788, January 16, 1991, and by publication in the *Federal Register* (56 FR 2789, January 24, 1991)). No comment letters were received.

Schedule H of the NASD's By-Laws, which became effective on August 1, 1989, requires reporting of price and volume information for principal transactions in all "non-NASDAQ" securities if certain conditions are met. "Non-NASDAQ" security is currently defined in Subsection 1(a) of Schedule H to mean "any equity security that is neither included in the National Association of Securities Dealers Automated Quotation System nor traded on any national securities exchange."

The NASD believes the proposed amendments have become necessary due to changes that have occurred in the over-the-counter ("OTC") market since the adoption of Schedule H. Specifically, substantial trading has been effected in the OTC market in certain NASDAQ and regional exchange listed securities that are not encompassed in the regulatory reporting requirements for non-NASDAQ OTC securities as defined under Schedule H. These trades in NASDAQ and listed stocks being effected in the OTC market are also not required to be reported pursuant to Schedules D or G of the NASD By-Laws,

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1989).

allocating stocks to specialist units. See Securities Exchange Act Release No. 26162, *supra* note 2 (File No. SR-BSE-87-8) for a more detailed description of the BSE's specialist performance evaluation program.

⁶ 15 U.S.C. 78f(b)(5) (1988).

for NASDAQ securities or listed securities, respectively.³

Therefore, in an effort to provide the NASD's Market Surveillance Department and the Commission with more complete records on non-NASDAQ trading activity for regulatory purposes, the NASD has proposed to include these trades under the reporting requirements of Schedule H. The NASD believes the inclusion of these transactions in the reporting requirements will allow them to monitor trading and detect abuses respecting OTC transactions in such securities. Moreover, the NASD believes removal of the current price and volume thresholds will simplify calculations and reporting procedures for members active in non-NASDAQ stocks. Schedule H now requires members to aggregate daily purchases and sales of non-NASDAQ securities and report certain trading data to the NASD if the aggregated numbers exceed the current \$10,000 price and 50,000 share thresholds. The NASD has informed the Commission that members have often times found this to be a cumbersome procedure.

To accomplish the above stated goals of simplifying calculations for reporting transactions in non-NASDAQ securities and producing better documentation of trading events occurring in non-NASDAQ securities, the proposed rule change will expand the definition of "non-NASDAQ security" to apply to OTC transactions in securities listed on a regional exchange which do not meet primary exchange listing requirements. Additionally, the proposed rule change will expand the definition of "non-NASDAQ security" to apply to OTC trades in NASDAQ securities by a person not registered as a NASDAQ market maker in such securities. Finally, the rule will eliminate existing volume and price threshold for reporting trades in non-NASDAQ securities.

The Commission believes the proposed rule change will effectively capture a meaningful volume of trading not currently reflected in the regulatory reporting structure and thereby enhance the NASD's ability to monitor transactions in the OTC market. Further, the Commission is of the opinion that the amendments will produce trading reports which more accurately reflect

the realities of the OTC market as it exists today.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6) and the rules and regulations thereunder. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market." Finally, the Commission believes the proposed amendments to Schedule H are consistent with the Act in that the regulatory information submitted to the NASD will be more complete, thus enhancing the NASD's ability to surveil this segment of the OTC market.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 1, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5457 Filed 3-7-91; 8:45 am]

BILLING CODE 8010-01-M

[Release. No. 34-20931; File No. SR-NASD-91-7]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change By the National Association of Securities Dealers, Inc. Relating to Assessments and Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 11, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule amendment to section 2 of Schedule A of the NASD's By-Laws allows the NASD to keep examination fees collected from persons who are granted examination waivers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule amendment to section 2 of Schedule A would allow the NASD to keep examination fees collected from persons who are granted examination waivers. Article VII of Schedule C of the By-Laws allows the NASD to grant waivers of qualification examinations in exceptional cases and where good cause is shown. In the past the NASD has refunded the examination fees that it has collected from persons who have received a waiver from such examination. The NASD's Membership Department calculated that it lost substantial revenues in recent years as a result of such refunds. Handling waiver requests is a time-consuming process in terms of researching and reviewing an individual's record to verify clerical errors or ancillary experience. Most of the waiver requests involve registration errors which were made by member firms who failed to properly transfer a persons registration categories when such person was changing employment to another member firm. This verification and review process involves a tremendous amount of paperwork and telephone communication with members. The NASD is therefore proposing to retain the examination fee to help offset the costs associated with the waiver review process.

(b) The NASD believes that the proposed rule change is consistent with and in furtherance of section 15A(b)(5) of the Act, which requires that the rules

³ Schedule G only requires reporting of OTC transactions in securities listed on the NYSE or the Amex, and securities listed on regional exchanges which meet the original NYSE or Amex listing requirements. *NASD Securities Dealers Manual*, CCH ¶1917. Likewise, transaction reports on these securities are not reported under the daily reporting requirements of section 5(s) of Schedule D. *NASD Securities Dealers Manual*, CCH ¶1821.

of the Association provide for the equitable allocation of reasonable fees and other charges among members and other persons using any facility or system which the Association operates or controls, in that it allows the NASD to partially recover the substantial costs involved in the waiver review process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change is effective upon filing, pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e)(2) of Securities Exchange Act rule 19b-4 in that it affects assessments and fees imposed by the Association exclusively upon its members.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All

submissions should refer to the file number in the caption above and should be submitted by March 29, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: March 1, 1991.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-5567 Filed 3-7-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28923; File No. SR-NYSE-90-44]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Exchange Rule 103A—Specialist Stock Reallocation

I. Introduction

On September 25, 1990, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² a proposed rule change to amend Exchange Rule 103A in order to add performance standards relating to the Exchange's Specialist Performance Evaluation Questionnaire ("SPEQ").³

The proposed rule change was published for comment in Securities Exchange Act Release No. 28540 (October 16, 1990), 55 FR 42798 (October 23, 1990). No comments were received on the proposal.

II. Background

Exchange Rule 103A sets forth performance standards for specialists and provides for the initiation of a formal "Performance Improvement Action" in any case where a specialist unit does not meet a performance standard specified in the Rule.⁴ NYSE

Rule 103A historically has contained performance standards applicable to the SPEQ for both a specialist unit's overall rating result and its results on the different functional categories under which specific questions are grouped.⁵

Effective with the first quarter 1990, the Exchange implemented the new, current SPEQ process which was approved by the Commission on February 5, 1990.⁶ The former SPEQ used absolute scores to evaluate specialist performance, whereas the scoring methodology on the new SPEQ, as described below, gives specialists their overall rank among all specialist units as well as a range of ranks, which shows their comparability to other units. The proposed rule change provides specific, minimum relative performance standards so that specialists who are regularly among the lowest ranked units on a relative basis would be subject to performance improvement actions.⁷

III. Description of the Proposal

(A) Scoring Methodology

According to the Exchange, the scoring methodology for the new SPEQ produces two types of results. Specialist units are informed as to how they rank on an overall basis, and in each of the five functions (Dealer, Service, Competitiveness, Communication, and Administrative), among all specialist units. Currently, there are 44 specialist units on the Exchange. Thus, for example, a unit might receive a rank of 20 on an overall basis, and a rank of 22 on a particular function, meaning that it ranked 20 out of 44 units overall, and 22 out of 44 on that function.

Specialist units also receive a "range of ranks" on an overall basis and for each function. For example, a unit might receive an overall rank of 20, with a range of ranks from 17 to 25. This means that the unit ranked 20th out of 44 units, but its scores were roughly comparable to a unit ranked as high as 17, and as

⁵ Currently, the SPEQ is comprised of 21 questions which are grouped under the following five functional categories: the Dealer Function, the Communications Function, the Administrative Function, the Service Function and the Competitiveness Function (which includes a question regarding a specialist's Intermarket Trading System performance). The Dealer, Service, and Competitiveness Function categories are each accorded a percentage weight of 30% on the SPEQ, while the Communications and Administrative Function sections have a percentage weight of 5% each.

⁶ See Securities Exchange Act Release No. 27675 (February 5, 1990), 55 FR 4922 (order approving File No. SR-NYSE-89-32).

⁷ See Securities Exchange Act Release No. 28215 (July 17, 1990), 55 FR 30060 (notice of filing and order granting accelerated temporary approval to File No. SR-NYSE-90-24).

¹ 15 U.S.C. 78e (b) (1988).

² 17 CFR 240.19b-4 (1990).

³ The SPEQ, which was last revised in February, 1990, (see note 6, *infra*), is a quarterly survey on specialist performance completed by eligible floor brokers (*i.e.*, any floor broker with at least one year of experience). The SPEQ requires floor brokers to rate, and provide written comments on, the performance of specialist units with whom they deal frequently.

⁴ Under NYSE Rule 103A, a specialist's performance is measured by a combination of SPEQ sources and objective standards of performance (*e.g.*, timeliness of regular openings; promptness in seeking floor official approval of non-regulatory delayed openings; timeliness of Super-Designated Order Turnaround System turnaround performance; and responses to administrative messages).

low as 25. The Exchange indicates that this scoring methodology allows a unit to determine whether its scores are significantly different from the scores received by other specialist units.⁸

(B) Proposed Performance Standards

The Exchange proposes that a unit be subject to the initiation of a Performance Improvement Action where its overall rank placed it in the bottom 10% of all units, and its range of ranks placed it in the bottom 15% of all units, for any quarter. For example, a unit ranked 41 or worse out of 44, with a range of ranks from 38 to 44, would have been placed in the bottom 10% in overall ranking and its range of ranks would place it in the bottom 15%, as this range indicates that the unit is not statistically significantly different from a unit rated no higher than 38 (which is in the bottom 15%). Thus, a unit receiving such results would be subject to a Performance Improvement Action.

Regarding scores for particular functions, a unit would be subject to a Performance Improvement Action under NYSE Rule 103A if in any quarter the unit received an overall rank in the bottom 10%, and a range of ranks in the bottom 15%, for two or more functions. A unit also would be subject to a Performance Improvement Action if it received an overall rank in the bottom 10%, and a range of ranks in the bottom 15%, for the same function in two consecutive quarters.

According to the Exchange, when utilizing the proposed scoring methodology for the first two quarters of 1990, no unit would have been subject to a Performance Improvement Action based on its overall score. The Exchange indicates, however, that one unit did fall into the bottom 10% in its rank and the bottom 15% in its range of ranks in two functions in the first quarter. Under the new standards, therefore, the unit would have been subject to a Performance Improvement Action. Additionally, the Exchange determined that in the second quarter, two units fell into the bottom 10% in their ranks and the bottom 15% in their range of ranks for one function. If these units repeated this performance for the same function in the following quarter, they also would be subject to a Performance Improvement Action.

In addition to the proposed new performance standards, the proposal

also allows the Exchange's Market Performance Committee to continue to have the authority to engage in counseling sessions with units when appropriate. Pursuant to the proposal, this Committee also will continue to impose allocation freezes (i.e., periods during which a unit is not permitted to apply to be a specialist for a newly listed security) where appropriate to improve performance even if no Performance Improvement Action is mandated by the standards of NYSE rule 103A.

IV. Commission Findings

The Commission believes that specialist units play a crucial role in providing stability, liquidity and continuity to the trading of Exchange stocks. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules thereunder, is the maintenance of fair and orderly markets in their designated securities.⁹ To ensure the fulfillment of these obligations, it is important that the Exchange operate an effective oversight of specialist performance. Critical to this oversight is the specialist performance evaluation process.

Accordingly, for the reasons set forth below, the Commission finds that the NYSE's proposal to adopt new performance standards for its revised SPEQ process is consistent with sections 8 and 11 of the Act.¹⁰ Specifically, the Commission believes that the proposal is consistent with the section 6(b)(5) requirement that the rules of the Exchange be designed to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market and in general, to protect investors and the public interest. The Commission believes that the proposed rule change significantly enhances the Exchange's specialist evaluation process and that the proposal is likely to encourage improved specialist performance consistent with the protection of investors and the public interest.

The Commission also finds that the proposal is consistent with section 11(b) of the Act and rule 11b-1 thereunder, which allow exchanges to promulgate rules relating to specialists in order to maintain fair and orderly markets and to remove impediments to and perfect the mechanism of a national market system. The proposal upholds these objectives in that, by enhancing the Exchange's ability to evaluate specialist performance, it helps to promote the

maintenance of fair and orderly markets.

The Commission has long favored the incorporation of relative performance standards into the specialist evaluation process so that specialists who were regularly among the lowest ranked specialist units would be subject to performance reviews, regardless of whether their performance met a predetermined level of unacceptable performance. In this regard, the Commission consistently has urged the NYSE, and other exchanges, to adopt relative performance measures into its specialist evaluation process.¹¹ The need for the NYSE to adopt such relative performance standards was highlighted by specialist performance on the Exchange during the 1987 market break. In the Division of Market Regulation's ("Division") report on the October 1987 Market Break, the Division examined specialist performance on the NYSE on October 19 and 20, 1987.¹² Although some NYSE specialists appeared to perform well under the adverse conditions, the Division found that specialist performance during the October 1987 Market Break varied widely.¹³ The Division concluded that the wide disparity in specialist performance underscored the need for the NYSE to develop relative standards of performance for evaluating specialists.¹⁴

The recently approved SPEQ and the accompanying performance standards being approved herein should substantially improve the NYSE's specialist evaluation program. The Commission believes that the revised SPEQ, which utilizes a relative, as opposed to an absolute, scoring

¹¹ See, e.g., letters from Douglas Scarff, Director, Division of Market Regulation, SEC, to John J. Phelan, Jr., President, NYSE, dated November 10, 1981 and August 18, 1982; letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to John J. Phelan, Jr., President, NYSE, dated July 30, 1986; Securities Exchange Act Release No. 25681 (May 9, 1988), 53 FR 17287; and Securities Exchange Act Release No. 27455 (November 22, 1989), 54 FR 49152 (order approving proposal by the American Stock Exchange, Inc. to adopt equities specialist performance and allocation and reallocation procedures to its specialist unit evaluation questionnaire).

¹² See Division of Market Regulation, *The October 1987 Market Break*, February 1988, at xvii, 4-1.

¹³ The Division also examined NYSE specialist performance during the October 13 and 16, 1989 market volatility. In general, the Division found that, although NYSE specialists performed reasonably well in October, 1989, individual specialist performance varied and not all specialists performed adequately. See Division of Market Regulation, *Market Analysis of October 13 and 16, 1989*, December 1990, at 3-4, 33-44.

¹⁴ See *The October 1987 Market Break*, at xvii, 4-28 to 4-29.

⁸ In order to determine if the scores are significantly different in a statistical sense, the Exchange employs the Mann-Whitney two-sample U-test. See letter from Donald Seimer, NYSE, to Mary Revell, Branch Chief, Branch of Exchange Regulation, Division of Market Regulation, SEC, dated November 16, 1990.

⁹ Rule 11b-1 under the Act, 17 CFR 240.11b-1 (1990); NYSE Rule 104.

¹⁰ 15 U.S.C. 78f and 78k (1988).

methodology, should ensure that specialists who are regularly among the lowest ranked units are subject to performance reviews regardless of whether their performance meets an arbitrarily determined level of unacceptable performance.¹⁵ By providing the Exchange with a mechanism to identify and correct specialist performance that is inferior to that of the bulk of specialist units, the new relative performance standards will assist the Exchange in addressing performance weaknesses by specialist units and should be useful in motivating specialists to improve their performance. Thus, the NYSE's adoption of relative performance standards should further the maintenance of fair and orderly markets.

In addition, the Commission believes that the chosen percentiles of 10% and 15% will reflect accurately those specialist units requiring a Performance Improvement Action. As previously noted, the Exchange indicated that one out of the 46 units would have been subject to a Performance Improvement Action because it fell into the bottom 10% in its rank and the bottom 15% in its range of ranks in two functions in the first quarter of 1990. Further, the results of the SPEQ for the second and third quarters of 1990 indicate that one unit would have been subject to a Performance Improvement Action.

After careful review of the results for the first three quarters of 1990, the Commission finds that the chosen percentiles highlight adequately those units requiring performance improvement. The Commission believes that the 10% and 15% threshold figures chosen by the Exchange should continue to emphasize those units whose performance is largely inferior to the bulk of specialist units. The Commission expects, however, that the Exchange will continue to assess whether the chosen percentiles accurately reflect a unit's substandard performance, and whether the current percentiles should be raised in the future.

In conclusion, the Commission believes that the performance standards that the Exchange proposes to incorporate into rule 103A should increase substantially the effectiveness of the NYSE's specialist evaluation program. Because the specialist is instrumental in providing stability, liquidity and order to exchange markets, the proposed performance standards, by providing the Exchange with a mechanism to identify and correct

specialist performance that is inferior to that of the majority of specialist units, should ensure a high level of market quality and performance in Exchange listed securities, thereby furthering the maintenance of fair and orderly markets, consistent with Sections 6 and 11 under the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act¹⁶ that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Dated: February 27, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5459 Filed 3-7-91; 8:45 am]

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[Release No. 34-28928; File No. SR-OCC 89-12]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to Using the Theoretical Intermarket Margin System for Equity Options on a Temporary Basis

March 1, 1991.

On October 3, 1989, The Options Clearing Corporation ("OCC") submitted a proposed rule change (File No. SR-OCC-89-12) to the Securities and Exchange Commission ("Commission" or "SEC") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ relating to a new margin system for equity options. Notice of the proposal appeared in the *Federal Register* on November 1, 1989, to solicit comment from interested persons.² No comments were received by the Commission. This order approves the proposal on a temporary basis through May 31, 1992.

I. Introduction

The proposal would adopt new OCC Rule 601 (captioned "Margin on Positions in Stock Options"), which authorizes OCC to use its Theoretical Intermarket Margin System ("TIMS") for calculating clearing member margin on equity options.³ This new margin system

is to be known as "Equity TIMS," as distinct from "Non-Equity TIMS," which is OCC's existing margin system for non-equity options ("NOEs").⁴ The proposal also would make various other changes, mainly of a technical and conforming nature, to OCC's rules.

OCC's proposed Equity TIMS margin system is designed, like its existing equity option margin system (known as the "production system"), to protect OCC against the cost of liquidating open option positions in the event of a member default or insolvency. OCC would use Equity TIMS to determine the amount of margin its members must deposit in order to maintain their option positions. OCC would collect those deposits in forms already specified in OCC's rules.⁵ Equity TIMS would use options price theory (i.e., an option pricing model)⁶ to: (1) project the cost of liquidating a clearing member's option positions, taking into consideration (a) all short option positions and (b) all long option positions over which OCC is entitled to assert a lien,⁷ in the event of an assumed "worst case" change in the price of the underlying assets; and (2) set clearing member margin requirements to cover that cost.⁸ By

⁴ A NEO is an option contract for which the underlying asset is anything other than an issue of stock. NEOs include, e.g., stock index options, Treasury security options, certificate of deposit options, and currency options. See *id.* at 235; OCC Rule 602A(b)(1).

⁵ OCC clearing members may deposit the following assets to satisfy margin requirements: (a) cash or checks, (b) government securities, (c) letters of credit issued by a bank or trust company, and (d) common stocks that meet certain quality standards. See OCC Rule 604.

⁶ Option pricing models apply mathematical techniques to option strategies by using a formula that expresses the value of an option as a function of: its underlying asset, its length of time until maturity, its exercise price, yields on alternative investments, risk data, and similar factors. For a short discussion of the Black-Scholes Model, one of the best known option pricing models, see L. McMillan, *Options as a Strategic Investment*, 406-414 (2d Ed. 1986). For the seminal article on the Cox-Rubinstein Model (a refinement of the Black-Scholes Model), which will be used by Equity TIMS, see J. Cox, S. Ross, & M. Rubinstein, "Options Pricing: A Simplified Approach," 7 *Journal of Financial Economics* 229-263 (1973).

⁷ TIMS would calculate margin requirements on the equity options in a clearing member's account as an integrated portfolio. OCC would accord no credit to option positions over which OCC could not assert a lien (for example, fully-paid long customers' options).

⁸ OCC's proposed margin requirements for equity options apply only to margin for OCC's clearing members, i.e., so-called "clearing margin." These clearing margin requirements do not involve either: (1) minimum margin requirements for customer accounts as set forth in Regulation T of the Board of Governors of the Federal Reserve System, 12 CFR 220, and in the rules of the securities markets (e.g., New York Stock Exchange Rule 430); or (2) minimum net capital requirements for broker-dealers as set forth in Rule 15c3-1 under the Act, 17 CFR 240.15c3-1 (1990).

¹⁶ 15 U.S.C. 78s(b)(2) (1988).

¹⁷ 17 CFR 200.30-3(a)(12) (1990).

¹ 15 U.S.C. 78s(b)(1).

² See Securities Exchange Act Release No. 27394 (October 28, 1989), 54 FR 46175.

³ An "equity option" is an option contract for which the underlying asset is an issue of stock. See D. Scott, *Wall Street Words*, 116 (1988).

¹⁵ See discussion of revised SPEQ in Securities Exchange Act Release No. 27675, *supra* note 8.

contrast, under OCC's existing equity option system, clearing margin on an uncovered short position⁹ is calculated by multiplying the option premium by the unit of trading (ordinarily 100 shares of stock per contract) and by 1.3 (a predetermined multiplication factor).¹⁰

II. Description of the Proposal

A. OCC's Proposed Equity Margin System

Under OCC's proposed system, OCC would organize all equity option classes¹¹ into "class groups."¹² All equity options would form a single "product group."¹³ TIMS would treat all stock options (*i.e.*, the product group) in a clearing member's account as an integrated portfolio.¹⁴

The daily margin requirements would have two components: "premium margin" and "additional margin." "Premium margin" is designed to mark-to-market the option position, *i.e.*, to account for any change in the closing price of the option from the previous day. (In calculating premium margin, OCC uses the previous day's closing asked prices for the option series.) "Additional margin" is designed to

cover the projected incremental cost of liquidating an option position in the event of an adverse change in the price of the underlying stocks.

Three types of accounts can exist for clearing margin purposes on OCC's books: (1) Firm accounts,¹⁵ (2) market maker accounts,¹⁶ and (3) customer accounts.¹⁷ OCC clearing members use firm and market maker accounts to maintain their option positions for their own accounts and for the accounts of other market professionals. From OCC's perspective, the main difference between professional accounts and customer accounts is that OCC can obtain a lien (*i.e.*, a security interest) on long option positions in professional accounts, but ordinarily cannot obtain such a lien on long option positions in customer accounts. Accordingly, OCC rarely provides clearing margin credit on long positions in customer accounts.¹⁸ Thus, the proposed system, like OCC's existing equity option and NEO systems, would calculate clearing margin differently for market professionals' (*i.e.*, firms' and market-makers') accounts than for public customers' accounts.¹⁹

1. Market Professionals: Firm and Market-Maker/Specialist Accounts

a. The Class Group

The first step in calculating TIMS margin is to net offsetting long and short positions in each option series within each class group.²⁰ The net long or short position in each series is used to calculate the appropriate margin requirement.

Second, "premium margin" is calculated for the net long or short position in each series of the class group. Premium margin, as noted, is based on the previous day's closing asked prices on option premiums.²¹ Short positions will result in a margin debit (*i.e.*, a margin requirement), and long positions will result in a margin credit. The margin debits and credits within a class group are netted, providing a premium margin debit (*i.e.*, requirement) or credit for each class group.

Third, the "additional margin" is determined by using an option pricing model to compare the liquidating value of the class group at several predetermined underlying asset prices, including: (1) An amount equal to the current market value of the underlying asset plus an applicable "margin interval" representing the maximum theoretical one-day increase ("upside price"),²² (2) An amount equal to the current market value of the underlying asset minus an applicable "margin interval" representing the maximum theoretical one-day decrease ("downside price"), and (3) An amount equal to any option exercise price falling between the upside price and the downside price.²³

To determine the maximum one-day price movement in the underlying asset that OCC should anticipate (the "margin interval"), OCC will analyze historical price changes in the underlying asset specifically.²⁴ OCC's criteria for setting the "margin interval" are designed to ensure that the "additional margin" is sufficient to protect against a price movement equal to or exceeding at least 99.7% of the daily price changes in the underlying asset for the last three months or for the previous year, whichever yields the more conservative result from OCC's perspective (*i.e.*, a 99.7% confidence level). Moreover, OCC has represented that it will undertake to include data on the volatility of underlying assets over longer periods

⁹ An "uncovered short position" is the position of an option contract writer who does not own the underlying stock. See M. Thompson, *Investment & Securities Dictionary*, 299 (1986).

¹⁰ Clearing members can reduce margin through OCC netting of certain hedged positions. See OCC Rule 601: Division of Market Regulation, *The October 1987 Market Break* at 10-35 to 10-36 (February 1988).

¹¹ The term "class" of equity option means all option contracts of the same type (puts or calls) and style (American or European) on the same underlying stock; *e.g.*, all puts or all calls on the stock of International Business Machines ("IBM"). See OCC By-Laws, Art. I, sect. 1(11); L. McMillan, *Options as a Strategic Investment* 456 (2d Ed. 1986).

¹² Proposed OCC Rule 601(b)(2) defines "class group" to mean all classes of equity options (puts and calls) relating to the same underlying stock.

The only difference between "class" and "class group" is that while a "class" includes only the put or the call option contracts of the same type and style on an underlying stock (*e.g.*, the puts or the calls on IBM stock), a "class group" would include both the put and call option contracts on that underlying stock (*e.g.*, the puts and calls on IBM stock). Telephone conversation between Robert B. Wilcox, Jr., Attorney, Schiff, Harden & Waite (Counsel for OCC), and Thomas C. Etter, Jr., Attorney, Commission (November 17, 1989).

¹³ By contrast, in the case of NEOs, OCC has organized class groups into several larger product groups, including such product groups as stock index options and long term Treasury options.

The term "product group" means two or more class groups whose underlying assets have been determined by OCC to exhibit sufficient price correlation to warrant the margining of options thereon on a combined basis. See OCC Rule 602A(b)(3).

¹⁴ As discussed below, the term "account" for the purpose of Equity TIMS means a firm's account or a market maker's account, *i.e.*, a professional's account as distinct from a customer's account. See also OCC By-Laws, Art. I, section 1(w).

¹⁵ OCC By-laws, Art. 1, section 1(z).

¹⁶ *Id.*, section 1(y).

¹⁷ *Id.*, section 1(x).

¹⁸ One such circumstance involves customer spread positions. See, *infra*, text at note 33.

¹⁹ The difference in essence, amounts to credits for long positions in non-customer accounts and results in lower margin requirements for clearing member accounts with the same positions as customer accounts.

²⁰ The term "series" means all option contracts of the same class with the same exercise price, expiration date, and unit of trading. See OCC By-Laws, Art. I, section 1(mm).

²¹ See proposed OCC Rule 601(b)(4).

²² The term "maximum theoretical one-day increase" refers to the maximum one-day price movement in the underlying asset based on OCC's historical volatility studies.

²³ See, in this filing, proposed OCC Rules 601(b)(7) and 601(c)(1)(C).

²⁴ The term "margin interval" means the maximum daily change in the "marking price" of the underlying security, upward or downward, assumed by OCC in projecting potential changes in the liquidating value (cost) of positions in options for the purpose of calculating additional clearing margin. OCC would fix the margin interval for each underlying security at such amount as it may "deem necessary or appropriate." See proposed OCC Rule 601(b)(8). Consistent with OCC policies set by the margin committee, OCC currently sets the margin interval to protect against 99% of the daily price changes in assets underlying option contracts during the preceding three months and one year (the "confidence interval"). OCC has represented that it will consult with the Commission prior to making any material change to its margin policy. See letter from Don L. Horwitz, General Counsel, OCC, to Jonathan Kallman, Assistant Director, SEC, dated February 20, 1991. Under the proposed rule, the term "marking price" would mean: (1) the closing price of the option contract's underlying stock in its primary market on the preceding trading day; or (2) if such stock was not traded in its primary market on the preceding trading day, the highest reported asked quotation (in the case of a call option contract) or the lowest reported bid quotation (in the case of a put option contract) at the close of the trading day. See proposed OCC Rule 601(b)(6).

(i.e., from three to ten years) and that it currently is compiling data for this purpose.²⁵

To calculate the theoretical net liquidating value at the upside prices and the downside prices described above, OCC will rely on an options pricing model.²⁶ OCC believes that options price theory has practical applications for calculating margin requirements because it can be used to calculate the theoretical value of an option (i.e., potential liquidating value) when the underlying asset value changes.²⁷

Each theoretical liquidating value would be compared to the current actual liquidating value to determine the upside price and the downside price at which OCC is exposed to the greatest risk. The difference between the theoretical liquidating value and the current actual liquidating value at that upside price and that downside price are equal to the upside and downside "additional margin" requirements or credits, respectively, at the class group level.

b. The Product Group

The upside "additional margin" amounts for all class groups are summed to determine the upside "additional margin" amount for the product group. Likewise, the downside "additional margin" amounts for all class groups are summed to determine the downside "additional margin" amount for the product group. Each upside and downside "additional margin" credit for any class group is reduced by a percentage predetermined by OCC, which percentage reduction would depend on the degree of correlation OCC had observed during the previous year for the equity options product group.²⁸ OCC has stated that the

purpose of this reduction is to compensate for any lack of correlation in price movements among the class groups.

The "additional margin" requirement for the product group is an amount equal to either the total upside variation or the total downside variation, whichever represents a margin requirement (i.e., reflecting an increase in liquidating cost or a decrease in liquidating value for the positions comprising the product group). In cases where both variations represent margin requirements, the "additional margin" requirement is the larger of the two; and where both represent margin credits, the "additional margin" requirement is zero. Unlike "premium margin," which can be either a requirement or a credit, "additional margin" is always either a margin requirement or zero (i.e. never a margin credit against "premium margin" requirements).²⁹

The total margin requirement or credit for the product group is an amount equal to the sum of: (1) the net "premium margin" requirement (or credit, if applicable) and (2) the "additional margin" requirement. If the "premium margin" represents a margin requirement, "additional margin" will accordingly add to that requirement. If the "premium margin" is a margin credit (as would be the case for a product group predominately comprised of long positions), "additional margin" ordinarily would reduce the resulting margin credit (but never to less than zero, because, although the long positions that generated the credit might cease to be assets, they would never become liabilities).

In summary, if the positions in the equity option product group liquidate to a deficit, the total margin requirement for the product group is an amount equal to the sum of that deficit and the "additional margin" requirement for the product group. If the positions in the product group liquidate to a credit, the total margin amount for the product is an amount equal to that credit, reduced by the additional margin requirement for the product group.

Finally, under the proposal, if the total margin amount for the equity option product group is a credit, 100% of that credit (an increase from the 50% provided for under the current rules of the production equity margin system

and the NEO system) could be applied against the margin requirements for NEOs in the account and vice versa.³⁰ If the account as a whole (equities and NEOs) shows a margin credit, there would be no margin requirement.

2. Customers' Accounts and Firm Non-Lien Accounts

OCC does not have a lien on firm non-lien accounts or long positions carried in customer accounts (i.e., segregated long positions).³¹ All positions in a firm non-lien account or customer account are segregated unless they comprise the long leg of a specific customer's spread and are communicated as such by the clearing member in written form.³² OCC's proposal established slightly different procedures for margining these accounts. First, segregated long positions will not be offset against short positions in the same series of options, and they are assigned no value for margin calculation purposes. Second, in calculating product group margin, premium margin credits for class groups within the product group are reduced to zero (that is, there is no class group "premium" or "additional margin" credit).

B. OCC's Current Equity Option System

Similar to OCC's proposed equity option margin system, OCC's current equity option system differentiates between market professional accounts

²⁵ The proposal would permit OCC margin credits on equity option positions to offset margin requirements on NEO positions, and vice versa. See proposed OCC Rule 601(c)(2) captioned "Cross-over Credit"; proposed OCC Rule 602(c)(3) captioned "Aggregate Margin."

Any margin credit as a result of calculating margin requirements for the equity option product group already reflects a 70% reduction in margin credits at the class group level. In light of this substantial reduction in margin credits, OCC believes a further reduction at the product group level is unnecessary.

Crossover credits, as noted, would apply only to market professional accounts. No cross-over credit would be available for customer accounts. Telephone conversation between Robert B. Wilcox, Attorney, Schiff, Harden & Waite (counsel for OCC) and Thomas C. Etter, Attorney, Commission (November 22, 1989).

³¹ The term "segregated long position" means that portion of a long position in a firm non-lien account which has been segregated on the books and records of OCC. See OCC By-Laws, Art. I, sect. 1(kkk).

OCC has advised the Commission that as a practicable matter firm non-lien accounts are only a theoretical concept and are not actually used. Conversation between James C. Yong, Deputy General Counsel, OCC, Robert B. Wilcox, Jr., Attorney, Schiff, Harden & Waite, and Thomas C. Etter, Jr., Commission (November 17, 1989).

³² Rules of the Commission preclude long value credits where the long positions are segregated. See Rule 80-1(g) under the Act, 17 CFR 240.80-1(g) (1990).

²⁶ See letter from Don L. Horwitz, General Counsel, OCC, to Jonathan Kallman, Assistant Director, SEC, dated February 20, 1991.

²⁷ OCC has informed the Commission that it proposes to use the Cox-Rubinstein options pricing model. Cox-Rubinstein is a 1979 refinement of the Black-Scholes model, an equilibrium options pricing model that was introduced in 1973. See J. Cox, S. Ross & M. Rubinstein, "Option Pricing: A Simplified Approach," *Journal of Economic Finance*, Vol. 7, 229-263 (1979). See also J. Cox & M. Rubinstein, "A Survey of Alternative Option Pricing Models," *Option Pricing* 3-34 (ed. by Mr. Brenner, 1983); R. Jarrow & A. Radd, "Tests of an Appropriate Option Valuation Formula," *id.* at 81-100.

²⁸ OCC states in its filing that options pricing models can be used to predict, given a set of inputs (e.g., options series, strike price, time to expire, interest rate, dividends, volatility, and underlying asset price), what the option is theoretically worth at a specified price for the underlying asset.

²⁹ OCC would allow a credit of 30% (i.e. a reduction of 70%) of the margin credit of one class group against margin requirements in another class group (within the equity option product group) as

provided in Interpretation and Policy .02 of proposed OCC Rule 601. If this percentage were to be modified prospectively, OCC would be required to file the modification with the Commission pursuant to section 19(b)(2) of the Act.

³⁰ See, in this filing, proposed OCC Rule 601(c)(1)(E).

(firm lien accounts and market maker accounts), on the one hand, and customer accounts and firm non-lien accounts, on the other hand. Like the proposed Equity TMS system, OCC's current equity system calculates the current liquidating value of a position ("premium margin" in the proposed TMS system) and adds to that amount a minimum amount (referred to as "additional margin" in the TMS system) to account for any changes in value of the position that OCC could expect during the next day.

Under the existing system, all long and short positions within the same class of options are paired, *i.e.*, long calls are paired with short calls and long puts are paired with short puts. Next the "marking prices"³³ of the paired longs in the class are added together, as are the marking prices for the paired shorts. Current liquidating value for the paired positions is the difference between those two totals. If there is an excess short value, there will be a margin requirement equal to that excess; if there is an excess long value, there will be a margin credit equal to that excess. The sum of the marking prices of the unpaired short positions (or unpaired long positions) will be equal to the margin requirement (or margin credit) for those positions. The margin required for the paired contracts is currently set at 130% of the excess short value or (in the case of professional accounts only) a credit equal to 70% of the excess long value. The margin required for the unpaired contracts is currently set at 130% of the short value or (in the case of professional accounts only) a credit equal to 70% of the long value.³⁴

To arrive at total margin for the class, the margin requirements and credits for the paired contracts and unpaired contracts, determined as described above, are summed. For firm lien and market-maker/specialist accounts, class margin credits are reduced by 50% and are then used to offset margin requirements for other classes.

³³ Under the current system, as explained below, the term "marking price" means the product of (1) the index multiplier (*i.e.*, 1.3 or 130%), and (2) the highest closing asked premium quotation for the option.

³⁴ OCC's Rules thus permit unpaired long positions in firm non-lien and market-maker/specialist accounts to offset, to some degree, the premium margin requirement resulting from the sum of excess short positions or unpaired short positions. This reflects OCC's lien on long positions in these accounts. The 30% reduction is intended to protect OCC against possibly unfavorable price changes, including a potential decrease in the liquidating value of those long positions during the next business day. Under the proposed system, this 30% reduction is replaced by the "additional margin" concept.

III. Rationale for the Proposal

OCC states in its filing that the purpose of the filing is to permit OCC to implement two basic recommendations of its Margin Committee. First, the Committee recommended the use of a mathematical model that incorporated modern option price and portfolio theory to establish margin levels for equity options. The proposal reflects the belief that such a margin system would provide a better estimate of OCC's risk exposure than traditional methods, with less propensity either to over-margin or under-margin positions. Second, the Committee recommended the elimination of the 50% haircut for product group margin credits in professional accounts.

OCC states in its filing that it believes the proposal is consistent with the Act, particularly section 17A of the Act in that, among other things, the proposal is designed to ensure the safeguarding of securities and funds that are in the custody and control of a clearing agency and to further the prompt and accurate clearance and settlement of securities transactions.

IV. Discussion

Section 17A(3)(b)(F) of the Act provides that the rules of a clearing agency must be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which the clearing agency is responsible. That section also requires that such rules must be designed to facilitate the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest. Additionally, section 17A(a) of the Act encourages the adoption of safer and more efficient clearance and settlement procedures that are less costly to investors, and it recommends using automation to help achieve these goals.

The Commission recognizes that a clearing margin system is not intended to provide a clearing agency with the maximum possible protection against the risk of member default. Such a level of protection would be counter-productive because it would reduce marketplace liquidity and cause inefficient use of capital. Moreover, it would increase the operating expenses of clearing members, while it decreased their revenues by reducing order flow. A clearing agency's margin system, however, must provide adequate protection or the margin system would put the clearing agency at an unacceptable level of risk of member default.

Following the Market Break of October 1987, OCC undertook a comprehensive analysis of how its margin operations had functioned during the Market Break. Based on that analysis, OCC concluded that during the volatile markets of October 1987, the TMS methodology then in use for NEOs had outperformed the equity options production margin system by providing: (1) A better measure of market risk for margin purposes, meaning a better framework for risk management in a crisis; and (2) a more accurate assessment of market risk to OCC.

The proposal represents an improvement over OCC's existing margin system for equity options. Collecting an additional 30% of the premium (as is done under the current system) may not be adequate in volatile markets, when premiums may halve or double in one day. In contrast, the TMS System will calculate projected option premiums based on potential increments in the price of stocks underlying option contracts. The proposed methodology appears to be better designed to account for potential risk than a static measure, such as exists today.³⁵ Moreover, the proposal will account for the value of positions, which tend to reduce OCC's liquidation risk, by calculating the value of a clearing member's option portfolio (*i.e.*, long and short positions) across a range of underlying securities prices. This can both reduce and increase clearing member margin requirements, depending on the positions involved, the relationship between those positions, and their relative price volatility.

The proposal represents an improvement over OCC's current system in several respects. As described above, the proposal will afford greater recognition to the value of offsetting positions in clearing member accounts. In addition, the proposal will enable OCC to select as the value for a long option contract an amount equal to its lowest liquidation value across a range of underlying asset values. Moreover, only 30% of the "additional margin" credit from any class group will be available to offset "additional margin" requirements for any other class group. This amounts to a 70% haircut on the value of long option positions. OCC selected the 70% "haircut" based on academic studies showing that only

³⁵ See Order approving NEO margin system, Securities Exchange Act Release No. 23167 (April 22, 1986), 51 FR 16127 [File No. SR-OCC-85-21]; Orders approving cross-margining, Securities Exchange Act Release Nos. 28153 (October 3, 1988), 53 FR 39567 [File No. SR-OCC-88-17]; 27296 (September 28, 1989), 54 FR 41195 [File No. SR-OCC-89-01].

about 30% of price changes in stocks are attributable to overall market factors and that stock prices have a "fairly uniform" correlation of 30%.³⁶

The 70% haircut can be seen as a critical and necessary safeguard in view of the comparatively low correlation of stock prices. In light of this safeguard and in the context of diversified equity options portfolios, the Commission believes it is not imprudent for OCC to allow any resulting margin credits to offset, without further reduction, margin requirements in NEO option product groups.³⁷

Nevertheless, the Commission is concerned about the potential lack of diversification of equity option holdings within clearing members' individual portfolios on which credit is being granted. In particular, it may not be appropriate to provide margin credit for long options that are not part of a diversified equity option portfolio because those long option positions may not exhibit the degree of price correlation that justifies offsets with other class groups or product groups.³⁸ It would seem better to deny margin credits for non-diversified long positions than to grant such credits and seek to recover the effect of such offsets through additional margin requirements later in the margin calculation process (add-ins) or after margin is collected. OCC believes that defining "diversification" in this context could be somewhat arbitrary and the cost of implementing changes to the margin methodology would be expensive relative to existing

safeguards,³⁹ the small number of clearing members with non-diversified equity option portfolios, and the risk posed by non-diversified equity option positions (as distinguished from concentrated positions in equity options). At the Commission's request, OCC has represented that it will use its Concentration Monitoring System ("ConMon")⁴⁰ to identify and monitor clearing members whose equity option portfolios appear to lack any diversification.⁴¹ In this regard, OCC has agreed that in addition to the current ConMon procedures and related policies now in effect: (1) OCC's ConMon analysts will review each clearing member account to evaluate the adequacy of diversification; (2) the reviews will be done on a daily basis, *i.e.*, every morning; (3) daily records will be kept of those clearing members holding less than ten class groups and of the dollar value of those clearing members' accounts; and (4) such information will be reported to the Commission on a quarterly basis as of the end of each month and the day after the expiration date.⁴² Operation of the Equity TMS System on a temporary basis and collection of this information should permit an informed decision on this issue.

At the Commission's request, OCC tested the methodologies of the existing production margin system and the proposed Equity TMS margin system as applied to 15 selected equity options on

a daily basis over a two week period. The options for this OCC study represented underlying stocks in three categories: stable (low beta), volatile (high beta), and average stability but increasingly volatile during the period in question due to market news. The results of the study showed that proposed TMS margins were: (1) Higher than the current production margins for out-of-the-money options and at-the-money options, and (2) lower than the production margins for deep-in-the-money options.

The Commission, in reviewing these results, as well as other relevant data, notes that OCC's existing production margins are set at 130% of option premium values, whereas the TMS margins for each option class group are based, in part, on an OCC-derived "margin interval," which itself is based on the historical volatility of the underlying stock price as measured by the stock's standard deviation. Then, the "margin interval," by the use of an options pricing model, is translated into specific margin requirements for the various option contracts on the underlying stock. Accordingly, the proposed TMS margins, in contrast to the more rigid, premium-based production margins,⁴³ will vary with, among other things, the volatility history of the underlying stocks. In fact, the proposal represents an effort, using statistics and option theory, to base margins on marketplace volatility, which is to say, risk.

The Commission notes, for example, that options trading approximately at-the-money tend to have relatively large risk and reward potential, usually meaning higher price volatility than options that are deep in- or out-of-the-money.⁴⁴ The existing margin standard of 130% of premium values takes minimal account of this risk. The Commission believes that it is consistent with the Act, particularly section 17A(b)(3)(F) of the Act, for an options clearing agency to recognize and address such risks in calculating and

³⁶ See letter from James C. Yong, Deputy General Counsel, OCC, to Thomas C. Etter, Attorney, Commission, dated September 27, 1990. See also Interpretation and Policy .02 to proposed OCC Rule 601(c)(1)(D).

OCC has found that even stocks of companies within the same industry, such as General Motors and Ford Motor Company, do not necessarily have a high degree of price correlation due to differences in capital, staff, and products.

³⁷ Margin credit at the product group level, between the equity option product group and an NEO product group, would be available only on a net long option position between the product groups.

³⁸ For example, a long option position in one class of equity options (*e.g.*, XYZ Corporation), may not provide a reasonable hedge against a short position in another equity option class (*e.g.*, ABC Corporation), let alone the S&P 500 stock index options, because an increase in the market value of XYZ Corporation stock may not bear any correlation to a price change in ABC Corporation or the S&P 500 index.

³⁹ OCC monitors the risks associated with its clearing members' positions and can require additional or special margin deposits from its clearing members. As a part of its surveillance programs, OCC considers quality (*e.g.*, depth and open interest in the options series, and time to expiration) and diversity of a member's options positions (long and short), and measures the

potential financial exposure inherent in those positions in the event of extreme market movements. That analysis incorporates prices movements in securities underlying option contracts that exceed OCC's margin interval parameters and the resulting liquidation values are measured against the clearing member's margin deposits and net capital. As a result of that analysis, OCC may determine to place a clearing member on closer than normal surveillance and, if the member is already on closer than normal surveillance, OCC may determine to require the clearing member to make additional margin deposits or take other action to limit the potential financial exposure. The Commission believes these measures are prudent and should be effective to address the potential financial risks. Because these measures depend on active review of clearing member activities, however, the Commission notes that OCC must continue to devote adequate resources to these functions.

⁴⁰ OCC's ConMon System is the means by which OCC identifies concentrations in clearing margin portfolios and monitors the financial risk associated with clearing member option positions. If OCC's staff determines that a firm's concentrated position violates certain pre-set parameters, OCC can move the firm to higher points on its watch level and require additional margin.

⁴¹ For those purposes, an account with positions in more than ten equity option class groups will be deemed to be diversified.

⁴² See letter from Don L. Horwitz, General Counsel, OCC, to Jonathan Kallman, Assistant Director, SEC, dated February 20, 1991.

⁴³ Since it is well-known that option premiums often are small in dollar terms (*i.e.*, often as low as $\frac{1}{8}$ or $\frac{1}{16}$) for out-of-the-money and at-the-money options, particularly those with less than a month to expiration, it follows that production margins on such options (which are 130% of the premiums) also may be small, irrespective of the volatility of the underlying stock; and since the premiums on deep-in-the-money options tend to be relatively large (often reflecting, on approximately a dollar-for-dollar basis, the excess of such premiums over their strike prices), the production margins on such options also tend to be relatively large.

⁴⁴ See, *e.g.*, L. McMillan, *Options as a Strategic Investment*, 2d ed., 89-94 (1986).

setting margin requirements.

No absolute certainty exists that either option margin system would provide adequate clearing margin to cover extreme price moves in underlying stocks, such as might occur in a takeover bid for a particular company or in a general market decline. Nevertheless, the Commission believes that OCC's incorporation of TMS methodology as the central element of its equity margin system will provide OCC with more effective protection by providing a more accurate measure of the risks that clearing margin must cover. The Commission further believes that the use of Equity TMS will reduce significantly the potential for both under- and over-margining positions, thereby facilitating more efficient use of broker-dealer capital.

The Commission previously approved OCC's use of options price theory to calculate margin requirements on NEO products and related futures positions.⁴⁵ The Commission has encouraged OCC to review its margin system safeguards, and OCC has raised its margin interval and reference confidence intervals. The Commission continues to believe that a minimum level of margin sufficient to cover reasonably anticipated market movements unrelated to news announcements is appropriate.

Recent experience indicates that the number of days in which dramatic market movements occur has increased significantly over the last few years.⁴⁶ OCC has responded to this situation by, among other things, setting its NEO margin interval at a level designed to cover 99.7% of the maximum assumed one-day price movements. The

Commission believes OCC has acted in a prudent manner by taking such action and urges OCC to maintain this degree of coverage.

While the Commission believes that the methodology employed by OCC's NEO margin system is basically sound, the Commission also is concerned that the system may be overdependent on short-term analyses of historical and implied volatility. Such analyses must provide the basis for any clearing corporation margin system, but their limitations also must be acknowledged. Accordingly, the Commission believes it would be beneficial for OCC to collect additional margin to cover the financial shocks caused by sudden, drastic price movements. Specifically, while OCC monitors the volatility of the markets in an effort to anticipate such movements, the Commission believes OCC should explore ways to ensure that its margin levels are not substantially reduced as a result of a decrease in short-term (three-to-twelve months) average volatility.⁴⁷

As noted above, OCC has represented that it will undertake to include price volatility data for equity options over longer terms in determining its margin intervals, and will report by April 30, 1992, on how this can be done. OCC also has represented that, thereafter, it will consult with Commission staff concerning the implementation of the best alternative.⁴⁸

V. Conclusion

For the reasons discussed in this order, the Commission finds that the proposed rule change is consistent with the requirements of the Act, particularly section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (SR-OCC-89-12) be, and hereby is, approved on a temporary basis through May 31, 1992.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.⁴⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-5460 Filed 3-7-91; 8:45 am]

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⁴⁵ See Division of Market Regulation, *Market Analysis of October 13 and 16, 1989*, at 162-63 (December 1990).

⁴⁶ See letter from Don L. Horwitz, General Counsel, OCC, to Jonathan Kallman, Assistant Director, SEC, dated February 20, 1991.

⁴⁷ 17 CFR 200.3-30(a)(12).

[Release No. 34-28924 ; File No. 600-25]

Self-Regulatory Organizations; Participants Trust Company; Filing of a Request of Temporary Registration as a Clearing Agency

February 27, 1991.

Pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(a), notice is hereby given that on February 25, 1991, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") an amendment to its form CA-1, requesting the Commission to extend PTC's registration as a clearing agency until March 31, 1992.¹ The Commission is publishing this notice to solicit comments on the proposed application from interested persons.

On March 28, 1989, the Commission granted the Participants Trust Company temporary registration as a clearing agency pursuant to sections 17A and 19(a)(1) of the Act, and rule 17Ab2-1 thereunder for a period of 12 months.² On March 28, 1990, the Commission approved PTC's proposal to amend its application requesting that the Commission extend PTC's registration as a clearing agency until March 31, 1991.³

PTC provides depository facilities for mortgaged-backed securities, particularly, securities guaranteed by the Government National Mortgage Association ("GNMA"). PTC services include certificate safekeeping, book entry deliveries, an automated facility for the pledge or segregation of securities and other services related to the immobilization of securities certificates.

Interested persons are invited to submit written data, views and arguments concerning the foregoing application within thirty days of the date of publication of this notice in the *Federal Register*. Such written data, views and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission,

¹ See letter from John J. Sceppa, President and CEO, PTC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission, dated February 22, 1991.

² See Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13286.

³ See Securities Exchange Act Release No. 27858 (March 28, 1990), 55 FR 12614.

⁴⁵ See, *supra*, note 35. OCC has had almost five years of experience with Non-Equity TMS, a period that included the Market Break of October 1987. While the volume and technological requirements for the proposed Equity TMS System are far larger than those required for the existing Non-Equity TMS System, the methodologies of the two TMS systems are similar (e.g., both TMS systems rely on margin intervals and on option price theory, in the form of a Cox-Rubinstein mathematical model, to calculate option margin positions). OCC has represented that it now has the necessary software programs and electronic hardware to support Equity TMS under routine and peak volume conditions and that its systems possess adequate internal and external security. See letter from James C. Yong, Deputy General Counsel, OCC, to Jonathan Kallman, Assistant Director, Commission, dated August 28, 1990.

⁴⁶ For example, in the 42 years between 1940 and 1982, the Dow Jones Industrial Average ("DJIA") declined by more than six percent on only three occasions. By contrast, the DJIA has declined by more than six percent on four occasions since 1987. See Statement of the Honorable Robert C. Glauber, Under Secretary of the Treasury for Finance, before the Subcommittee on Telecommunications and Finance, Committee on Energy and Commerce, U.S. House of Representatives (May 24, 1990).

450 Fifth Street NW., Washington, DC 20549. Reference should be made to file No. 600-25. Copies of the application and all written comments will be available for inspection at the Securities and Exchange Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-5461 Filed 3-7-91; 8:45 am]

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[Release No. 35-25264]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

March 1, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by March 25, 1991, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CNG Storage Service Company, et al.
(70-7729)

Consolidated Natural Gas Company ("Consolidated"), CNG Tower, Pittsburgh, Pennsylvania 15222-3199, a registered holding company, and its subsidiary companies, Consolidated Natural Gas Service Company, Inc.,

CNG Coal Company, CNG Energy Company, CNG Research Company and CNG Trading Company, all located at CNG Tower, Pittsburgh, Pennsylvania 15222-3199; The Peoples Natural Gas Company, Two Gateway Center, Pittsburgh, Pennsylvania 15222; Consolidated Gas Transmission Corporation and Consolidated System LNG Company, both located at 445 West Main Street, Clarksburg, West Virginia 26301; CNG Producing Company and CNG Pipeline Company, both located at One Canal Place, Suite 3100, New Orleans, Louisiana 70120; West Ohio Gas Company, 504 Colonial Building, Lima, Ohio 45802; CNG Development Company, One Park Ridge Center, P.O. Box 15746, Pittsburgh Pennsylvania 15244; The East Ohio Gas Company and The River Gas Company, both located at 1717 East Ninth Street, Cleveland, Ohio 44114; and Hope Gas, Inc., Union National Center West, Clarksburg, West Virginia 26301, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 13(b) of the Act and Rules 42, 43, 45, 88, 87, 90 and 91 thereunder.

Consolidated proposes to organize a new subsidiary company, CNG Storage Service Company ("Storage"), which would provide to customers natural gas storage facilities and services, including: (i) The purchase or lease of gas to be used as base gas in storage pools; (ii) the sale or lease of gas to customers as base gas in storage pools; (iii) the purchase, lease and development, construction, operation and maintenance of gas storage pools and related facilities; (iv) the purchase or lease of gas storage capacity from third parties and the sale, lease or brokerage of gas storage capacity to customers; and (v) other activities related to the operations and functions of a full service gas storage business. Storage's customers will be limited to CNG system associate companies and their direct and indirect customers, and to those supplying gas to CNG system associate companies.

Consolidated states that the acquisition of an interest in Storage is an acquisition of an interest in a company organized to participate in activities involving the storage of natural gas within the meaning of section 2(a) of the Gas Related Activities Act of 1990, Public Law 101-572, and, as such, is deemed, for purposes of section 11(b)(1) of the Act, to be reasonably incidental or economically necessary or appropriate to the operation of the integrated public utility system of the Consolidated system.

It is proposed that Storage will, from

time-to-time, through December 31, 1995, obtain necessary operating funds through: (a) The sale by Storage of its authorized but unissued common stock to Consolidated, \$10,000 par value; (b) open account advances made through the CNG System Money Pool ("Money Pool"), authorized by order dated June 12, 1986 (HCAR No. 24128) ("June 1986 Order"); or (c) long-term loans from Consolidated. Such funding will be in any combination of the foregoing and in such amounts that the aggregate outstanding amount obtained from Consolidated and/or the Money Pool will not at any time exceed \$100 million. It is also proposed that Storage participate in the Money Pool as both a borrower and a lender, on the same terms and under the same conditions as previously authorized by the Commission in the June 1986 Order.

To the extent that Consolidated has comparable outstanding debt, open accounts advances and long-term loans to Storage will have the same effective terms and interest rates as the related borrowings of Consolidated as follows: (1) Open account advances will be made through the Money Pool, and be repayable not more than one year from the date of the first advance, and will bear interest at the same effective rate of interest as Consolidated's weighted average effective rate for commercial paper and/or revolving credit borrowings. If no such borrowings are outstanding on the date of any advance, then the interest rate will be the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York; and (2) long-term loans will be evidenced by Storage's long-term, non-negotiable notes maturing over a period of time to be determined by the officers of Consolidated, with the interest rate based on and equal to the effective cost of money to Consolidated obtained through the most recent of its long-term debt financings. In the event Consolidated does not issue long-term debt during the period ending on December 31, 1994, the proceeds of which are allocable to Storage, long-term borrowings rates will be based on the indicative rate for comparable debt issuances published in the Salomon Brothers Inc. Bond Market Roundup on the date nearest to the date of borrowing. Such rate will be adjusted to match Consolidated's effective cost of money if Consolidated subsequently issues long-term debt within one year.

Consolidated also proposes to indemnify obligations of Storage in an

aggregate amount not to exceed \$50 million at any one time.

The Southern Company, et al. (70-7738)

The Southern Company ("Southern"), a registered holding company, 64 Perimeter Center East, Atlanta, Georgia 30346, and its public-utility subsidiary companies, Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, Gulf Power Company ("Gulf"), 500 Bayfront Parkway, Pensacola, Florida 32520, Mississippi Power Company ("Mississippi"), 2992 West Beach, Gulfport, Mississippi 39501, and Savannah Electric and Power Company ("Savannah"), 600 Bay Street East, Savannah, Georgia 31401, and Southern Electric Generating Company ("SESCO"), a subsidiary of Alabama and Georgia Power Company, 600 North 18th Street, Birmingham, Alabama 35291 (collectively, "Applicants"), have filed a post-effective amendment to their application-declaration filed under sections 6(a), 6(b), 7 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By order dated April 26, 1990 (HCAR No. 25077) ("1990 Order"), Southern was authorized, through March 31, 1992, to make capital contributions to Gulf in an amount not to exceed \$10 million. In addition, the 1990 Order authorized the Applicants to issue and sell, from time-to-time through March 31, 1992, up to the aggregate principal amount of \$500 million for Southern, \$350 million for Alabama, \$50 million for Gulf, \$120 million for Mississippi, \$40 million for Savannah and \$100 million for SESCO: (1) Short-term or term notes to banks; (2) commercial paper to dealers; and/or (3) short-term non-negotiable promissory notes to public entities in connection with the financing of certain pollution control facilities through the issuance by public entities of their revenue bond anticipation notes.

Southern now proposes, through March 31, 1992, to make capital contributions to Mississippi in an amount not to exceed \$20 million. The proceeds from such capital contributions will be used to provide funds for Mississippi's ongoing construction program and for other corporate purposes.

In addition, the Applicants propose to increase the amount of borrowing authorized for Alabama in the 1990 Order from \$350 to \$450 million. The terms and conditions of the additional borrowings will be the same as stated in the 1990 Order. The borrowings will be used to provide a portion of the funds required for acquiring or constructing plants, properties, permanent improvements, extensions or additions

to the property used or to be used by Alabama in its public utility business and for other corporate purposes. Alabama's cash requirements (excluding the sale of any senior securities) will result in a peaking of short-term notes in the middle of 1991, followed by a repayment of substantially all of the short-term notes by the end of 1991.

Columbus Southern Power Company et al. (70-7789)

Columbus Southern Power Company ("Columbus Southern"), 215 North Front Street, Columbus, Ohio 43215, Ohio Power Company ("Ohio Power"), 301 Cleveland Avenue, SW., Canton, Ohio 44402, and Kentucky Power Company ("Kentucky Power"), 1701 Central Avenue, Ashland, Kentucky 41101, electric public-utility subsidiary companies of American Electric Power Company, Inc., a registered holding company, have filed an application-declaration under sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

Columbus Southern, Ohio Power, and Kentucky Power ("Company") propose to issue and sell prior to December 31, 1991, unsecured promissory notes ("Notes") in aggregate principal amounts not to exceed \$130 million, \$50 million, and \$60 million, respectively, pursuant to one or more proposed term loan agreements ("Proposed Term Loan Agreement"). The Proposed Term Loan Agreement will be with one or more commercial banks, financial institutions or other institutional investors ("Lender"). The Notes will have maturities of not less than nine months nor more than twelve years and will bear interest at either a fixed rate, a fluctuating rate, or some combination of fixed and fluctuating rates.

No compensating balances shall be maintained with, nor fees in the form of substitute interest be paid to, a Lender under the Proposed Term Loan Agreement. In the event a bank or financial institution arranges for a borrowing from a third party, however, such institution may charge each Company a placement fee, not to exceed 7/8% of the principal amount of such borrowing. The Proposed Term Loan Agreement and the Notes may, in whole or in part: (1) be assigned by the Lender, or (2) the Lender may sell participations in the Proposed Term Loan Agreement and Notes. The assignee would have the same rights and benefits under the Proposed Term Loan Agreement as the Lender. The participant, however, would not have any rights under the Proposed Term Loan Agreement, but would have rights against the Lender in respect to the agreement between the participant

and the Lender. In either event, the Proposed Term Loan Agreement would provide that each Company pay the Lender the principal amount of the Notes on the last day of each calendar quarter (if the last day is not a business day, then on the next succeeding business day) in each case together with accrued interest. Each Company also would be required to reborrow, and the Lender would be required to relend, the principal amount of each Note on each repayment date, such reborrowing to occur up to the final maturity date of the Note. Each reborrowing by the Company also would reaffirm certain representations and warranties of that Company as of the date of such reborrowing.

The Proposed Term Loan Agreement may contain restrictive covenants which would prohibit the Company from, among other things, (1) creating, incurring, assuming or suffering to exist any liens on its property, with certain stated exceptions; (2) creating or incurring any indebtedness for borrowed money, other than as specified; (3) failing to maintain a specified level of capitalization; and (4) certain merger, consolidations, and dispositions of assets.

The Companies will use the proceeds from the sale of Notes, together with any other funds available to them: (1) To pay at maturity and to refund long-term debt; (2) to repay short-term debt; and (3) for other corporate purposes as permitted by law, including sinking fund payments.

The Companies will not enter into any early refunding transactions unless the estimated present value savings derived from the net difference between interest payments, on any Notes to be issued for refunding purposes and the specific securities to be refunded is, on an after-tax basis, greater than the present value of all redemption and issuing costs, assuming an appropriate discount rate. The discount rate used shall be the estimated after-tax interest rate, on the Notes to be issued for refunding purposes.

The Companies propose to issue the Notes either in accordance with the alternative procedures authorized by the Commission's Statement of Policy, dated September 2, 1982 (HCAR No. 22623) or under an exception from the competitive bidding requirements of Rule 50 pursuant to subsection (a)(5).

Central and South West Corporation et al. (70-7826)

Central and South West Corporation ("CSW"), a registered holding company, its service company subsidiary, Central

and South West Services, Inc. ("Services"), both located at 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, and five of its operating subsidiaries, Central Power and Light Company ("CP&L"), 539 North Carancahua Street, Corpus Christi, Texas 78401-2802, Public Service Company of Oklahoma ("PSO"), 212 East 6th Street, Tulsa, Oklahoma 74119-1212, Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71156-0001, West Texas Utilities Company ("West Texas"), 301 Cypress, Abilene, Texas 79601-5820, Transok, Inc. ("Transok"), 600 South Main, Tulsa, Oklahoma 74101 (collectively, "Subsidiaries") have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

CSW and its Subsidiaries propose to continue, through March 31, 1993, their short-term borrowing program through the use of the CSW System money pool ("Money Pool"), under the same terms and conditions as previously authorized by orders dated April 5, 1989, October 10, 1989 and May 15, 1990 [HCAR Nos. 24855, 24966 and 25090, respectively] ("Prior Orders").

The maximum short-term borrowing levels requested by CSW and its Subsidiaries are as follows, CSW—\$600 million, CP&L—\$200 million, PSO—\$100 million, SWEPCO—\$150 million, West Texas—\$50 million, Services—\$60 million and Transok—\$120 million. The aggregate principal amount of borrowings authorized for CSW and its Subsidiaries would not exceed \$800 million. The only change in the proposed maximum borrowing levels for CSW and its Subsidiaries, as authorized by the Prior Orders, is for Services to increase its authorization from \$35 million to \$60 million due to anticipated expenditures for telecommunications lines and equipment, computer hardware and building construction and improvements.

To provide funds for the Money Pool, CSW requests authorization to issue and sell commercial paper ("Commercial Paper"). The Commercial Paper will mature in 270 days or less and will be issued from time-to-time through March 31, 1993 to dealers in Commercial Paper or certain Financial Institutions. CSW requests an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) for the issuance and sale of Commercial Paper.

CSW and its Subsidiaries also request authorization to borrow money from banks, from time-to-time through March 31, 1993, to the extent that the surplus funds of CSW and the Subsidiaries are

insufficient to meet the Subsidiaries' requests for short-term loans. Such borrowing will not be made unless it would produce a lower cost of money than the issue of CSW's commercial paper and, in any event, they will not bear a rate of interest higher than the effective cost of money for unsecured prime commercial bank loans prevailing on the date of such borrowing. The borrowings will be evidenced by promissory notes maturing no later than December 31, 1992 and will be subject to prepayment by the borrower in whole at any time or in part from time-to-time, without penalty.

Compensation arrangements under lines of credit with banks maintained by CSW and its Subsidiaries are on a balance or fee basis. In general, fees range from 1/8 to 1/5 of 1% per annum on the average unused portion of the commitment and balance arrangements require average balances of 3% of the amount of the commitment.

Additionally, CSW requests authorization, from time-to-time through March 31, 1993, to borrow funds managed by the trust departments of banks if such borrowings result in a cost of money equal to or less than that available from the sale of commercial paper or other bank borrowings.

CSW and its Subsidiaries will use the proceeds of the borrowings (i) for the interim financing of the Subsidiaries' capital expenditure programs during the period and/or to provide for other working capital needs; (ii) in the case of borrowings by CSW, to loan or contribute as capital to the Subsidiaries for such purposes (subject, in the case of any capital contribution, to separate authorization by the Commission), or contribute as capital to other subsidiaries as authorized separately by the Commission; and (iii) to repay previous borrowings incurred for such purposes.

Consolidated Natural Gas Company (70-7827)

Consolidated Natural Gas Company ("Consolidated"), CNG Tower, Pittsburgh Pennsylvania 15222-3199, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act.

Consolidated proposes to borrow up to \$300 million, through March 31, 1994, pursuant to revolving credit agreements ("Credit Agreements") with the Chase Manhattan Bank acting for itself and as agent for certain other banks, and any loans made pursuant to the Credit Agreements will be evidenced by either a syndicated promissory note ("Syndicated Note") or money market

promissory note ("Money Market Note").

Under the terms of the Credit Agreements the bank loans will be in the form of revolving credits. Commitments under the Credit Agreements will commence as of the date thereof and will have an initial term expiring on the last business day in March of 1994. However, the Credit Agreements will provide that on each anniversary date the term of the agreement will, at Consolidated's request with the approval of the banks, be extended for a period of one year. In addition, on each anniversary date the commitments of the participating banks, at Consolidated's request with the approval of the banks, may be reallocated among the banks, subject to the condition that the total commitments under the Credit Agreements will at no time exceed \$300 million. The Credit Agreements will also provide that Consolidated will have the right at any time to terminate or reduce the individual commitments of the banks.

Loans made pursuant to the Credit Agreements may, at the option of Consolidated, be either syndicated by a group of the participating banks, or money market loans made by individual participating banks. Each loan will be evidenced by either a Syndicated Note or Money Market Note.

At the option of Consolidated, the interest rate for the Syndicated Note will be: (1) The higher of the Prime Rate announced by Manhattan Bank as in effect from time-to-time at its principal office in New York City or the Federal Funds Rate published by the Federal Reserve Bank of New York plus an increment of one-half of one percent; (2) the average of the London Interbank Offered Rate (LIBOR) quoted by the reference banks specified in the Credit Agreements, divided by one minus the reserve requirements for such deposits required by the Federal Reserve System, plus an increment of one-quarter of one percent; or (3) the average of the certificate of deposit rate quoted to the reference banks, divided by one minus the reserve requirements for such deposits required by the Federal Reserve System, plus an increment of three-eighths of one percent, plus the rate payable to the Federal Deposit Insurance Corporation for deposit insurance. The interest rate for Money Market Notes will be such rate as the banks may bid, which bid will, at the option of Consolidated, be expressed as all-in rate or as an increment above or below the average of the LIBOR rates quoted by the reference banks divided by one minus the reserve requirements

for such deposits required by the Federal Reserve System.

A fee of one-eighth of one percent will be charged on the revolving credit commitments commencing on the effective date of the Credit Agreements.

The proceeds of Consolidated's borrowings under the Credit Agreements will be used to provide short-term financing to its subsidiary companies or for working capital requirements, as authorized by Commission order dated June 29, 1990 (HCAR, No. 25110).

Georgia Power Company (70-7832)

Georgia Power Company ("Georgia"), 333 Piedmont Avenue, NW, Atlanta, Georgia 30308, a subsidiary of The Southern Company, a registered holding company, has filed an application-declaration under sections 6(a), 6(b), 7 and 12(d) of the Act and Rule 50(a)(5) thereunder.

Georgia proposes to finance and/or refinance the costs of certain pollution control facilities and sewage and solid waste disposal facilities at one or more of Georgia's electric generating plants or other facilities located in various counties in Georgia from time-to-time through December 31, 1994. It is proposed that the Development Authority of each county ("Authority") will issue its revenue bonds ("Revenue Bonds") for the purpose of making loans to Georgia to finance or refinance the costs of the acquisition, construction, installation and equipping of the facilities at the plant or other facility located in its county ("Project"). The aggregate principal amount of Revenue Bonds to be issued from time-to-time by the Authorities pursuant to authority granted hereunder will not exceed \$750 million.

While the actual amount of Revenue Bonds to be issued by each Authority has not yet been determined, such amount will be based upon the cost of refunding outstanding bonds or the cost of the Project located in its county. Present estimates indicate that approximately \$100 million of the \$750 million principal amount of Revenue Bonds will be for new financing of Projects, with the remainder to be available for refundings.

Georgia will not use the proceeds from the sale of the Bonds to refund outstanding pollution control bonds unless the estimated present value savings derived from the net difference between interest payments on any Revenue Bonds to be issued for refunding purposes and the specific securities to be refunded is, on an after-tax basis, greater than the present value of all redemption and issuing costs,

assuming an appropriate discount rate. Such discount rate is based on the estimated after-tax interest rate on the Revenue Bonds issued for refunding purposes.

Revenue Bonds will be sold by each Authority pursuant to arrangements with one or more purchasers or underwriters. The interest rate on the Revenue Bonds will be determined by the Board of Directors of the Authority and will bear either a: (1) fixed rate that may be convertible to a rate that will fluctuate in accordance with a specified prime or base rate(s) or may be determined pursuant to certain remarketing or auction procedures; or a (2) fluctuating rate that may be convertible to a fixed rate. While Georgia may not be party to the purchase or underwriting arrangements for the Revenue Bonds, such arrangements will provide that the terms of the Revenue Bonds and their sale by the Authority shall be satisfactory to Georgia.

Georgia will enter into a Loan Agreement with the Authority, relating to each issue of Revenue Bonds ("Agreement"). Under the Agreement, the Authority will loan to Georgia the proceeds of the sale of the Authority's Revenue Bonds, to be evidenced by the issuance of a non-negotiable promissory note by Georgia ("Note"). The proceeds will be deposited with a Trustee ("Trustee") under an indenture to be entered into between the Authority and the Trustee ("Trust Indenture"), under which the Revenue Bonds are to be issued and secured, and will be applied by Georgia to payment of the Costs of Construction, as defined in the Agreement, of the Project or to refund outstanding pollution control revenue obligations.

The Note will provide for payments to be made at times and in amounts which shall correspond to the payments with respect to the principal of, premium, if any, and interest on the Revenue Bonds whenever and in whatever manner the same shall become due, whether at stated maturity, upon redemption or declaration or otherwise. The Agreement will provide for the assignment to the Trustee or the Authority's interest in, and of the moneys receivable by the Authority under the Agreement and the Note.

The Agreement will also obligate Georgia to pay the fees and charges of the Trustee and will provide that Georgia may at any time, so long as it is not in default, prepay the amount due under the Note, including interest, in whole or in part, in amounts sufficient to redeem or purchase the outstanding

Revenue Bonds in the manner and to the extent provided in the Trust Indenture.

The Trust Indenture will provide that the Revenue Bonds will be redeemable at any time on or after a specified date from the date of issuance: (1) In whole or in part, at the option of Georgia, and may require the payment of a premium at a specified percentage of the principal amount; and (2) in whole, at the option of Georgia and without the payment of a premium under certain extraordinary circumstances. The Revenue Bonds will mature from one to 30 years from the first day of the month in which they are initially issued and may, in the case of a maturity of 15 to 30 years, be entitled to the benefit of a mandatory redemption sinking fund.

The Trust Indenture and the Agreement may give the holders of the Revenue Bonds the right, during such time as the Revenue Bonds bear interest at a fluctuating rate, to require Georgia to purchase the Revenue Bonds from time-to-time, and arrangements may be made for the remarketing of any such Revenue Bonds through a remarketing agent. Georgia also may be required to purchase the Revenue Bonds, or the Revenue Bonds may be subject to mandatory redemption at any time if the interest is determined to be subject to federal income tax. Also in the event of taxability, interest on the Revenue Bonds may be effectively converted to a higher variable or fixed rate, or Georgia may be required to indemnify the bondholders against any other increases in interest, penalties or taxes.

Georgia may determine to secure its obligations under the Note by delivering to the Trustee, to be held as collateral, a series of its first mortgage bonds ("Collateral Bonds") in principal amount either equal to: (1) The principal amount of the Revenue Bonds; or (2) the sum of the principal amount plus interest payments for a specified period. Collateral Bonds will mature on the maturity date of the Revenue Bonds and will be nontransferable by the Trustee. The Collateral Bonds, in the case of clause (1) above, would bear interest at a rate or rates equal to the interest rate or rates to be borne by the related Revenue Bonds and, in the case of clause (2) above, would be non-interest bearing. The obligation of Georgia to make payments with respect to the Collateral Bonds will be satisfied to the extent that payments are made under the Note sufficient to meet payments when due in respect of the related Revenue Bonds.

Upon acceleration by the Trustee of the principal amount of all related outstanding Revenue Bonds, the Trustee

may demand the mandatory redemption of the related Collateral Bonds at a redemption price equal to the principal amount thereof plus accrued interest, if any, to the date fixed for redemption. Upon the optional redemption of the Revenue Bonds, in whole or in part, at any time after they have been outstanding for a specified period, it may be provided that a related principal amount of the Collateral Bonds will be redeemed at the redemption price of the Revenue Bonds.

As an alternative to or in conjunction with the issuance of the Collateral Bonds, Georgia may cause an irrevocable Letter of Credit ("LOC") of a bank ("Bank") to be delivered to the Trustee. The LOC would be an irrevocable obligation of the Bank to pay to the Trustee, upon request, up to an amount necessary in order to pay principal of and accrued interest on the Revenue Bonds when due. Pursuant to a separate agreement with the Bank, Georgia would agree to pay to the Bank on demand all amounts that are drawn under the LOC, as well as certain fees and expenses.

As a further alternative to, or in conjunction with, securing its obligations under the Agreement and Note, Georgia may cause an insurance company to issue a policy of insurance guaranteeing the payment when due of the principal of and interest on any series of the Revenue Bonds. The insurance policy would extend for the term of the related Revenue Bonds, would be non-cancelable by the insurance company for any reason, and may provide for escrow payments by Georgia to indemnify the insurer. In the event that a LOC is delivered or an insurance policy is issued as alternatives to the issuance of the Collateral Bonds, or if none of the three security alternatives are exercised, Georgia may also convey to the Authority a subordinated security interest in the Project or other property of Georgia as further security for Georgia's obligations under the Agreement and the Note. Such subordinated security interest would be assigned by the Authority to the Trustee.

Central and South West Corporation
(70-7836)

Notice of Proposal to Amend Restated Certificate of Incorporation; Order Authorizing Proxy Solicitation

Central and South West Corporation ("CSW"), 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, a registered public-utility holding company, has filed an application-

declaration under sections 6(a), 7 and 12(e) of the Act and Rules 62 and 65 thereunder.

CSW proposes to amend ("Amendment") its Restated Certificate of Incorporation, as amended, to increase the maximum number of shares of its common stock, par value \$3.50 per share, ("Common Stock") it is authorized to have outstanding at one time from 150 million shares to 350 million shares. The proposed Amendment must be authorized by a vote of a majority of the holders of the outstanding shares of Common Stock entitled to vote at the annual meeting of stockholders to be held April 18, 1991 ("1991 Annual Meeting").

CSW also requests the authority to solicit proxies from its stockholders for use at the 1991 Annual Meeting with respect to the approval of the proposed Amendment. CSW has filed its proxy solicitation material and requests that the declaration, with respect to the solicitation of proxies from its stockholders in connection with the proposed Amendment, be permitted to become effective as provided in Rule 62(d) of the Act.

It appearing to the Commission that CSW's declaration regarding the proposed solicitation of proxies should be permitted to become effective forthwith, pursuant to Rule 62:

It is ordered, that the declaration regarding the proposed solicitation of proxies, be, and it hereby is, permitted to become effective forthwith, under Rule 62 and subject to the terms and conditions prescribed in Rule 24 under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 91-5565 Filed 3-7-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-28934; File No. SR-PHLX-90-39]

**Self-Regulatory Organization;
Philadelphia Stock Exchange, Inc.;
Order Approving Proposed Rule
Change Relating to Parity and Priority
Rules Applicable to Foreign Currency
Options Orders**

On December 26, 1990, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934

("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the parity and priority rules applicable to foreign currency options orders.

The proposed rule change was published for comment in Securities Exchange Act Release No. 28775 (January 14, 1991), 56 FR 2788. No comments were received on the proposal rule change.

Currently, PHLX Rules 119, 120, Commentary .12 to Rule 1014, and Options Floor Procedure Advice ("OFPA") B-6, set forth the priority and parity rules applicable to options transactions.³ Under the existing priority and parity rules, a Registered Options Trader ("ROT") is permitted to retain priority over or have parity with an off-floor order, including a customer order, only when closing a position. Otherwise, when a ROT is establishing or increasing a position, it must always yield to orders originating off-floor.⁴ The PHLX proposes to add a new paragraph (h) to its Rule 1014 in order to establish special parity and priority rules that are applicable to foreign currency options orders. Specifically, the PHLX proposes that, except for customer orders for less than 100 contracts and as otherwise noted below, all bids and offers for foreign currency options, regardless of account type (i.e., ROT, member, or customer) or size or whether representing an "opening" or "closing" transaction, shall be treated the same for purposes of determining time priority pursuant to PHLX Rule 119.⁵ In order to facilitate small customer orders, however, the PHLX proposes that all foreign currency options orders on behalf of customer accounts for under 100 contracts shall have time priority over all other bids and offers regardless of account type (except specialists). Moreover, the proposed PHLX rule explicitly provides that any bid or offer

¹ 15 U.S.C. section 78s(b)(1) (1982).

² 17 CFR 240.19b-4 (1989).

³ Rule 119 deals with the precedence of the highest bid and Rule 120 deals with the precedence of offers at the same price.

⁴ An ROT when establishing or increasing a position, however, may retain priority over or have parity with an off-floor order for the account of a member or broker dealer which is establishing or increasing a position in the trading crowd. See Commentary .12 to PHLX Rule 1014.

⁵ For the purpose of proposed paragraph 1014(h), the PHLX defines account types as follows: (1) an ROT account is a market functions account as defined in Section 220.12 of Regulation T of the Board of Governors of the Federal Reserve Board; (2) a member account is any account of a non-market making member/participant or an associated person of such a member/participant or for which such a member/participant or any of its associated persons maintains discretionary control; and (3) customer accounts are all accounts other than ROT, member or specialist accounts.

for the account of member that relies on the exemption under section 11(a)(1)(G) of the Act must yield time priority to any bid or offer for the account of a customer.

Other than the exceptions noted above, the PHLX proposes to treat all foreign currency options bids and offers on a uniform basis for priority and parity purposes. Specifically, the PHLX proposal provides that once a bid or offer has established priority, then another bid or offer may not gain parity at that price during that trade session until at least 10% of the size of the previous bid or offer or 100 contracts, whichever is greater, subsequently trades in that series ("priority threshold").⁶ The PHLX proposal further provides that, in the event that the priority threshold is not reached, then a person retains his priority, regardless of subsequent better bids or offers, if the bids or offers return to the level of the bid or offer with priority. A person with this priority, however, would relinquish it be either withdrawing his bid or offer or leaving the trading crowd.

The PHLX believes that its proposal is beneficial to public investors because it provides customer orders of under 100 contracts with time priority at all times over all other orders, except specialists who because of their market making responsibilities would not be subject to this requirement. Specifically, under the PHLX proposal, customer orders of under 100 contracts would receive priority over the competing orders of an ROT or member firm regardless of whether such orders represented "opening" or "closing" transactions.

Additionally, the Exchange believes that the proposal will encourage larger-sized quotations and narrower price quotations in its foreign currency options market for two reasons. First, because the proposal generally treats all orders of 100 contracts or more on an equal basis, floor traders will have the assurance that once they voice a size bid or offer then that bid or offer cannot be superseded by another bid or offer at the same price from any other market participant.⁷ Second, the proposal assures that any bid or offer that establishes priority will be guaranteed trades in that series of the greater of 10% of its size or 100 contracts, whichever is

greater, before anyone else can gain parity at that price.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of sections 6 and 11(a)⁸ and the rules and regulations thereunder. The proposed rule change is designed to ensure that public customer foreign currency options orders for less than 100 contracts be accorded time priority over all other orders of market participants other than specialists at the same price. This will enhance the ability of small public customers orders to receive a timely execution of their orders and could promote greater individual investor participation in PHLX foreign currency options markets. Specifically, the proposal increases the ability of customer orders of less than 100 contracts to be executed promptly because such orders will now have time priority over ROT closing transactions.

The Commission also believes that the proposed rule change may encourage foreign currency options market participants to make larger and tighter markets. As noted above, under the PHLX's current priority and parity rules, when an ROT is establishing or increasing a position, it may not retain priority over or have parity with an off-floor order.⁹ Thus, it is not uncommon that ROTs will voice bids or offers in the crowd and then be forced to reduce their participation in a trade or stand aside completely to let institutional investor orders participate in the trade. This is a result of the special nature of the foreign currency options market. Ordinarily, priority and parity rules of the options exchanges are designed to ensure that customer orders do not get displaced by professional orders that possess the time and place advantages inherent in membership access to the exchange floor. With foreign currency options and its underlying cash market, however, the "customers" in most instances are institutional investors who are just as sophisticated and well-informed as the market makers.¹⁰ Thus, because of the

effect of existing priority and parity rules, at the present time, ROTs in foreign currency options have less incentive to quote large, tight markets.¹¹ Therefore, in this context, the imposition of priority and parity rules on ROTs for orders greater than 100 contracts serves no compelling regulatory purpose.

The Commission believes that the PHLX proposal, by placing all orders of 100 contracts or better on par, will serve as an incentive to ROTs to quote tighter, larger markets because the ROTs will not be preempted by institutional orders. Specifically, a market participant who makes the best bid or offer will have his priority guaranteed until a significant number of contracts are traded before anyone else can gain parity with his bid or offer, and, if the size of his bid or offer is over 1000 contracts, then the size of his priority threshold will increase. The proclivity of ROTs to voice larger quotes and narrower spreads as a result of the proposal, in turn, should contribute to deeper and more liquid foreign currency options markets. In addition, larger and narrower quotes may attract additional individual and institutional investor foreign currency options orderflow to the Exchange.

Although the PHLX proposal generally treats all orders (except customer orders less than 100 contracts) on a uniform basis for priority and parity purposes, the Commission notes that the PHLX proposal specifically provides that any bid or offer for the account of a member which relies on the exemption under section 11(a)(1)(G) of the Act from the prohibition against Exchange members trading for their own account or associated accounts while on the floor of the PHLX must yield time priority to any bid or offer of the account of a non-member. Therefore, the Commission finds that the PHLX's proposal is consistent with Section 11(a) of the Act and the rules and regulations thereunder.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-PHLX-90-39) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

⁶ The PHLX proposal further provides that, if bids or offers on parity have priority over other subsequently voiced bids or offers in the crowd, then the priority threshold shall be calculated on the basis of the combined sizes of the bids or offers on parity.

⁷ Unless, of course, an equal bid or offer for less than 100 contracts is represented on behalf of a customer account.

⁸ 15 U.S.C. sections 78f and 78k (1982).

⁹ See *supra* note 4.

¹⁰ The PHLX has conducted a study which showed that, for orders greater than 100 contracts, less than 1% of the total contract volume is represented by non-institutional accounts. See letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Thomas R. Gira, Branch Chief, SEC, dated October 31, 1990.

¹¹ It should be noted, however, that PHLX Rule 1014(c)(ii) also constrains the size of bid/ask differentials that ROTs can create in foreign currency options.

¹² 15 U.S.C. Section 78s(b)(2) (1982).

¹³ 17 CFR 200.30-3(a)(12) (1989).

Dated: March 4, 1991.
 Margaret H. McFarland,
Deputy Secretary.
 [FR Doc. 91-5566 Filed 3-7-91; 8:45 am]
 BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Region IV Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Nashville, will hold a public meeting at 8:30 a.m. on Thursday, March 28, 1991, at Montgomery Bell State Park, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Robert M. Hartman, District Director, U.S. Small Business Administration, 50 Vantage Way, suite 201, Nashville, Tennessee 37228-1500, telephone (615) 736-5850.

Dated: February 25, 1991.
 Jean M. Nowak,
Director, Office of Advisory Councils.
 [FR Doc. 91-5552 Filed 3-7-91; 8:45 am]
 BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Flight Service Station at Lancaster, CA; Closing

Notice is hereby given that on or about February 22, 1991, the Flight Service Station at Lancaster, California, will be closed. Services to the general aviation public of Lancaster, formerly provided by this office, will be provided by the Flight Service Station in Riverside, California. This information will be reflected in the FAA Organization Statement the next time it is reissued.

Authority: Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354.

Issued in Lawndale, California, on February 25, 1991.

George Harvey,
Acting Regional Administrator, Western-Pacific Region.
 [FR Doc. 91-5524 Filed 3-7-91; 8:45 am]
 BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 91-10-IP-NO. 1]

General Motors Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

General Motors Corporation of Warren, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.101, Federal Motor Vehicle Safety Standard No. 101, "Controls and Displays," on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.3.4(a) of Standard No. 101 requires that means be provided which are capable of making the telltales and their identification visible to the driver under all driving conditions. GM determined that 9,681 of its 1990 Oldsmobile Toronado vehicles failed to comply with S5.3.4(a) of Standard No. 101. The high beam telltale on these vehicles shares its electrical ground with some of the other vehicle interior systems, one of which is the cigar lighter circuit. The application of the cigar lighter reduces current flow to the high beam telltale, causing it to dim or extinguish temporarily.

General Motors supports its petition with the following: "The telltale extinguishes only when the shared circuit is subjected to heavy electrical current flows (above 5 amps). The circuit is normally subjected to loads of this level only during the heating of the cigar lighter which draws over 5 amps. However, the specified heating time for the cigar lighter is a maximum of 20 seconds at room temperature and a maximum of 25 seconds at lower temperatures. Therefore, the high beam telltale would extinguish for a maximum of 25 seconds. Typical accessories (e.g. cellular telephones) which use the cigar lighter circuit draw much less current (approximately 2 amps) and would not dim the telltale to the point that it is not visible."

GM is not aware of field complaints indicating concern resulting from the subject condition. Warranty records were also reviewed for the vehicle population in question and no evidence of activity which might relate to the subject condition was found.

Because the telltale would extinguish only under specific circumstances and any suppression of the high beam telltale illumination level would persist only for a short period of time, GM believes that this noncompliance with FMVSS 101 is inconsequential to motor vehicle safety.

Interested persons are invited to submit written data, views and arguments on the petition of GM, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the Notice will be published in the *Federal Register* pursuant to the authority indicated below.

Comment closing date: April 8, 1991.

Authority: [15 U.S.C. 1417; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8]

Issued on March 4, 1991.

Barry Felrice,
Associate Administrator for Rulemaking.
 [FR Doc. 91-5444 Filed 3-7-91; 8:45 am]
 BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY

U.S. Congress-Korean National Assembly Project

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The Bureau of Educational and Cultural Affairs, U.S. Information Agency, announces its intention to award a grant of up to \$70,000 to a private not-for-profit organization to bring 12 Korean university students to the United States and to send up to 12 American university students to Korea for three to four weeks during the summer of 1991. Participants will spend part of their time working as interns in the offices of interested members of the host country's national legislature, receive briefings from government officials and other specialists, undertake research papers to study issues of bilateral concern, and participate in cultural and educational activities.

DATES: Deadline for proposals: Must be received by COB March 31, 1991.
Duration: The duration of the grant will be 3-6 months. The program should take place while the Congress and the Korean National Assembly are in session. No funds may be expended until the grant agreement is signed.

ADDRESSES: The original and twelve copies of the completed application should be submitted to the following office: U.S. Information Agency, Office of the Executive Director (E/X), ATTN: Korea Project 1991, room 336, 301 4th Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations should write or call Ms. Bettye Stennis at the Youth Programs Division (E/VY), Office of International Visitors, room 357, 301 4th Street SW., Washington, DC 20547; telephone 202-619-6299.

SUPPLEMENTARY INFORMATION: Programs are authorized under Public Law 87-256, the Mutual Educational and Cultural Exchange Act of 1961, whose purpose is "to increase mutual understanding between the people of the United States and the people of other countries." Programs under the authority of the Bureau must be balanced and representative of the diversity of American political, social, and cultural life. Programs and projects must conform with all Agency requirements and guidelines and are subject to final review by the USIA contracting officer.

This program is designed to broaden the perspectives of select groups of Korean and American young people on the history of U.S.-Korean relations and current political, economic and security aspects of the bilateral relationship. It will also provide both groups with first-hand experience of the host country, which will enhance their understanding of relations between the two governments as well as enable them to form personal contacts.

The central focus of the program should be interaction between the exchange participants and their peers in the host country. The Americans should have the opportunity to exchange views on current bilateral issues with Korean university students and other young people. The Koreans should be given a chance to discuss current issues with fellow interns in the Congressmen's offices as well as meet with other young Americans in formal, structured situations designed by the grantee. In both cases, these should supplement orientations and lectures about the host country in which the speakers are

government officials, professors, legislators or legislative staff.

Members of Congress will nominate American participants and offer internships for the Koreans in their offices. The Korean National Assembly arranges the internships in Korea, and participants spend part of each exchange week working at their internships. Supplementary programming should encourage exchange with experts and specialists, facilitate the research on academic papers and provide opportunities for travel outside the national capital.

Internships for the Americans are arranged by the Korean National Assembly. The grantee organization will need to monitor these arrangements and interact with the Koreans and possibly USIS Seoul in providing supplementary educational and cultural activities. One alternative might be to place the Americans in various private sector research institutions and other think tanks in Seoul.

In the U.S., the grantee organization is also responsible for the following: arranging appropriate supplementary programming; arranging lodging, which may be homestays, dormitories or some other group living arrangement; working with congressional staff in planning and implementing the visit to districts, which has been traditionally part of the program's travel week. Another possibility is to interact with members of the Korean-American community to learn about problems, opportunities and the issues which it faces in this country.

Application Procedures

To be eligible for consideration organizations must be incorporated in the U.S., have not-for-profit status as determined by the IRS, and be able to demonstrate expertise in a field relevant to the theme of the project on which they are bidding. Organizations in existence less than four years will only be eligible for grants under \$60,000. Experience programming exchange visitors is desirable.

Interested organizations should write or call the Youth Programs Division (address provided above) to request detailed application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific information on the contents of a complete application.

Grant-funded expenditures will generally be limited to the following categories:

- International travel
- Domestic travel

- Maintenance and per diem, not to exceed government limits
- Orientation costs and materials
- Cultural enrichment allowance (not to exceed \$150 per participant)
- Speaker honoraria, conference or seminar registration fees, rental of meeting facilities. (Speaker honoraria should not exceed \$200 per day per speaker.)
- Administration—salaries, benefits, other direct and indirect costs

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Eligible proposals will be forwarded to panels of USIA officers for advisory review in conformity with the criteria set forth herein and in the guidelines for preparing proposals prior to funding decisions by delegated officials. All proposals will also be reviewed by the Agency's Office of the General Counsel as well as other Agency offices. The Associate Director for Educational Cultural Affairs identifies and approves potential grant recipients. Final technical authority for grant awards resides with the Agency Contracting Officer.

Completed applications will be reviewed according to the following criteria:

- a. Quality of the program plan and adherence of the proposed activity to the criteria and conditions described above;
- b. Feasibility of the program plan and institutional capacity of the organization to conduct the program;
- c. Track record—the Agency will consider the past performance of prior grantees and the demonstrated potential of new applicants;
- d. Multiplier effect/impact—the impact of the exchange activity on the wider community and on the development of continuing institutional ties;
- e. Value to U.S.-Korean relations—the assessment of USIA's geographic area desk of the potential impact and significance of the proposed project in Korea;
- f. Cost effectiveness—greatest returned on each grant dollar and degree of cost-sharing exhibited.

Notification

All applicants will be notified of the

results of the review process on or about May 15, 1991. Funded proposals will be subject to periodic reporting and evaluation requirements.

Dated: February 27, 1991.

William P. Glade,

Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 91-5529 Filed 3-7-91; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register

Vol. 56, No. 46

Friday, March 8, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., March 18, 1991.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the February 19, 1991, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review new audit report.

CONTACT PERSON FOR MORE

INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: March 5, 1991.

Francis X. Cavanaugh,
Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 91-5656 Filed 3-6-91; 12:29 pm]

BILLING CODE 6760-01-M

Test Case Report

Friday
March 8, 1991

Part II

Supplement to the Guide to Record Retention Requirements in the CFR

Revised as of January 1, 1991

SUPPLEMENT TO THE GUIDE TO RECORD RETENTION REQUIREMENTS IN THE CFR

This Supplement published by the Office of the Federal Register, updates as of January 1, 1991, the edition of the Guide published in 1989.

The Guide to Record Retention Requirements in the CFR is a guide in digest form to the provisions of Federal regulations relating to the keeping of records by the public. It tells the user (1) what records must be kept, (2) who must keep them, and (3) how long they must be kept.

The Guide published in 1989 was revised as of January 1, 1989. This Supplement updates the Guide as of January 1, 1991. The changes indicated in brackets occurred in 1990, unless otherwise noted. The publications should be used together.

The Supplement is derived from the regulations published by the various agencies in the *Federal Register* from January 1, 1989, through December 31, 1990. It was prepared under the direction of Richard L. Claypoole. Gladys Queen Ramey was chief editor. INQUIRIES, telephone 202-523-3187. SUGGESTIONS concerning this publication may be sent to Martha L. Girard, Director, Office of the Federal Register, National Archives and Records Administration, Washington, D.C. 20408.

Coverage

In preparing both the Guide and the Supplement it was necessary to establish boundaries in order to keep it within its intended purpose.

The records covered are those that address categories of activities conducted by individuals, businesses, and organizations for which retention requirements are expressly stated in the Code of Federal Regulations.

In many regulations there is an implied responsibility to keep copies of reports and other papers furnished to Federal agencies. Such implied requirements have not been included in the Guide and the Supplement.

The following types of requirements also have been excluded:

(1) Requirements involving the furnishing of reports to Government agencies, the filing of tax returns, or the submission of supporting evidence with applications or claims.

(2) Requirements involving the display of posters, notices, or other signs in places of businesses.

(3) Requirements contained in individual Government contracts, unless the contract provisions are incorporated in the Code of Federal Regulations.

Arrangement

The arrangement and numbering system in the Supplement follows the numbering system established for the Guide. The numbering in the Guide corresponds to the numbering in the CFR.

For example, a record retention requirement relating to agriculture will be found in the Guide under Title 7, Agriculture, and, further, under the agency which administers and enforces the regulation in which the record retention requirement appears. The number to the left of the item is the part and section number in Title 7 of the CFR in which the text of the regulation is printed. Because not all sections of the CFR contain record retention requirements, the numbering in the Guide has gaps in the numerical sequence.

Citation: Citations to the Guide and to the CFR are the same. An example is 7 CFR 17.17. The record retention requirement involved can be checked in digest form in the Guide and in full text in the CFR.

NOTICE

The Guide to Record Retention Requirements and this Supplement do not have the effect of law, regulation, or ruling. They comprise a guide to legal requirements that appear to be in effect as of January 1, 1991.

LIST OF AGENCIES AND CFR TITLES APPEARING IN THIS SUPPLEMENT

Title 7—Agriculture

Agriculture Department
Agricultural Marketing Service
Agricultural Stabilization and Conservation Service
Animal and Plant Health Inspection Service
Commodity Credit Corporation
Farmers Home Administration
Federal Crop Insurance Corporation
Food and Nutrition Service
Foreign Agricultural Service
Rural Electrification Administration

Title 9—Animals and Animal Products

Agriculture Department
Animal and Plant Health Inspection Service
Packers and Stockyards Administration

Title 10—Energy

Energy Department
Nuclear Regulatory Commission

Title 11—Federal Elections

Federal Election Commission

Title 12—Banks and Banking

Federal Deposit Insurance Corporation
Federal Housing Finance Board
Federal Reserve System
National Credit Union Administration

Oversight Board

Resolution Trust Corporation
Treasury Department
Thrift Supervision Office

Title 13—Business Credit and Assistance

Small Business Administration

Title 14—Aeronautics and Space

Transportation Department
Federal Aviation Administration

Title 15—Commerce and Foreign Trade

Commerce Department
Export Administration Bureau
International Trade Administration
National Oceanic and Atmospheric Administration

Title 17—Commodity and Securities Exchanges

Commodity Futures Trading Commission
Securities and Exchange Commission

Title 18—Conservation of Power and Water Resources

Energy Department
Federal Energy Regulatory Commission

Title 19—Customs Duties

Treasury Department
Customs Service

Title 20—Employees' Benefits

Labor Department
Employment and Training Administration

Title 21—Food and Drugs

Health and Human Services Department
Food and Drug Administration
Justice Department
Drug Enforcement Administration

Title 22—Foreign Relations

International Development Cooperation Agency
Agency for International Development
State Department

Title 24—Housing and Urban Development

Housing and Urban Development Department

Title 26—Internal Revenue

Treasury Department
Internal Revenue Service

Title 27—Alcohol, Tobacco Products and Firearms

Treasury Department
Alcohol, Tobacco and Firearms Bureau

Title 29—Labor

Labor Department
Occupational Safety and Health Administration
Pension Benefit Guaranty Corporation
Wage and Hour Division

Title 30—Mineral Resources

Interior Department
Minerals Management Service
Labor Department
Mine Safety and Health Administration

Title 31—Money and Finance: Treasury

Treasury Department
Foreign Assets Control Office
Monetary Offices

Title 33—Navigation and Navigable Waters

Transportation Department
Coast Guard

Title 34—Education

Education Department

Title 38—Pensions, Bonuses, and Veterans' Relief

Veterans Affairs Department

Title 40—Protection of Environment

Environmental Protection Agency

Title 42—Public Health

Health and Human Services Department
Health Care Financing Administration
Public Health Service

Title 43—Public Lands: Interior

Interior Department
Office of the Secretary

Title 44—Emergency Management and Assistance

Federal Emergency Management
Agency

Title 45—Public Welfare

Health and Human Services Department
Child Support Enforcement Office
Family Assistance Office

Title 46—Shipping

Transportation Department
Coast Guard

Title 47—Telecommunication

Federal Communications Commission

Title 48—Federal Acquisition Regulations System

Defense Department
General Services Administration
National Aeronautics and Space
Administration
Panama Canal Commission
Personnel Management Office

Title 49—Transportation

Interstate Commerce Commission
Transportation Department
Federal Highway Administration
Federal Railroad Administration
Office of the Secretary
National Highway Traffic Safety
Administration
Research and Special Programs
Administration
Urban Mass Transportation Administration

Title 50—Wildlife and Fisheries

Commerce Department
National Oceanic and Atmospheric
Administration
Interior Department
Fish and Wildlife Service

AGRICULTURE DEPARTMENT**Food and Nutrition Service****7 CFR****225.6 State agencies participating in the summer food service program.**

(a) To maintain the written records on each hearing for families wishing to appeal a denial of an application for free meals. Such records shall include the action being appealed, any documentary evidence and a summary of oral testimony presented at the hearing, the decision and the reasons for the decision, and a copy of the notice sent to the family.

Retention period: 3 years following the conclusion of the hearing during which it shall be available for examination by the family or its representatives at any reasonable time and place.

(b) To maintain on file documentation of site visits and reviews in accordance with 7 CFR 225.15(d)(2) and (3).

(c) To maintain all accounts and records pertaining to the Program. Such records and accounts shall be made available to State, Federal, or other authorized officials for audit or administrative review, at a reasonable time and place.

Retention period: 3 years after the end of the fiscal year to which records pertain, unless audit or investigative findings have not been resolved, in which case the records shall be retained until all issues raised by the audit or investigation have been resolved.

225.6 Food service management companies participating in the summer food service program.

To maintain such records (supported by invoices, receipts, or other evidence) as the sponsor will need to meet its responsibilities under this Part 225.

Retention period: 3 years from date of receipt of final payment under the contract, except that is audit or investigation findings have not been resolved, such records shall be retained until all issues raised by the audit or investigation have been resolved.

225.8 State agencies participating in the summer food service program for children.

(a) To maintain complete and accurate current accounting records of Program operations which will adequately identify fund authorizations, obligations, unobligated balances, assets, liabilities, income, claims against sponsors and efforts to recover overpayments, and expenditures for administrative and operating costs.

Retention period: 3 years after the date of submission of the final Program

Operations and Financial Status Report (SF-269), or beyond 3 years until resolution of any audit questions.

(b) To also retain a complete record of each review or appeal conducted as required under 7 CFR 225.13.

Retention period: 3 years following the date of the final determination on the review or appeal.

225.9 Service institutions participating in the summer food service program for children.

To maintain records to support claims for reimbursement. See also 7 CFR 225.8.

225.10 State agencies participating in the summer food service program.

To maintain records, including records of the receipt and expenditures of funds for audit and management evaluations.

Retention period: Until all issues raised by the audit and investigation have been resolved.

225.11 State agencies participating in the summer food service program.

To maintain in file all evidence relating to investigations of and actions on complaints received or irregularities noted in connection with the operation of the Program.

225.13 State agencies participating in the Summer Food Service Program for children.

To maintain records regarding each appeal review. Such records shall document compliance with applicable regulations and shall include the basis for decision.

225.15 Service institutions participating in the summer food service program.

(a) To maintain records of participation and of preparation of ordering of meals to demonstrate positive action toward meeting objective of providing only one meal per child at each meal service.

(b) To maintain accurate records which justify all costs and meals claimed.

Retention period: Records shall be available at all times for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and state agencies for a period of three years following the date of submission of the final claim for reimbursement for the fiscal year.

225.16 Service institutions participating in the summer food service program for children.

(a) To maintain a copy of the documentation establishing the eligibility of each child receiving meals under the Program at camps.

(b) To maintain on file statements from a recognized medical authority recommending alternative foods for participating children who are unable, because of medical or other special dietary needs, to consumed approved meals.

225.19 Participants in the summer food service program for children. [Revised, 1989; new amendment contained no record retention requirements]

250.30 Distributing agencies, subdistributing agencies, or recipient agencies entering into contracts for the processing and labeling of donated foods.

(a) To maintain documentation in accordance with 7 CFR 250.16 when substituting donated foods with commercial foods.

(b) To retain invoices from recipient agencies when end products are sold through a discount system.

274.3 State agencies participating in the food stamp program.

To maintain and keep current a master issuance file which is a composite of issuance records of all certified food stamp households.

Retention period: 3 years from the month of origination. The period may be extended at the written request of the Food and Nutrition Service.

274.6 State agencies participating in the food stamp program.

(a) To maintain the signed household statement of nonreceipt of authorization document or coupons in the case records.

(b) To maintain, in readily identifiable form, a record of the replacements granted to the household, the reason, the month, countable as defined in 7 CFR 274.6(b)(2)(iv). The record may be a case action sheet maintained in the case file, notations on master issuance file, if readily accessible, or a document maintained solely for this purpose.

Retention period: 3 years from the month of origination. This period may be extended at the written request of the Food and Nutrition Service.

274.7 State agencies participating in the food stamp program.

To maintain records of (a) authorization document and coupons that are undeliverable or returned; (b) specimen coupon received; and (c) to retain a copy of the request to Food and Nutrition Service for permission to destroy unusable coupons.

274.7 States participating in temporary emergency food assistance for victims of major disasters. [Removed, 1989]

274.7 States participating in temporary emergency food assistance for victims of other than major disasters. [Removed, 1989]

274.11 State agencies participating in the food stamp program.

To maintain issuance and reconciliation records which include, at a minimum, notices of change, HIR cards, inventory documents, Forms FNS-250 and substantiating documents, cashiers daily reports, receptionist daily tally sheets, master issuance files, the records for issuance for each month, and issuance systems.

Retention period: 3 years from the month of origination. The period may be extended at the written request of the Food and Nutrition Service.

276.2 State agencies participating in the food stamp program.

To maintain monthly records which detail the computation of reimbursement amounts reported on the Form FNS-209 for audit purposes.

Animal and Plant Health Inspection Service

7 CFR

318.13-4g Papaya irradiation processors.

To maintain records that include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration, dosimetry, dose distribution in the product, and the date of irradiation.

Retention period: For a period of time that exceeds the shelf life of the irradiated food product by 1 year.

Federal Crop Insurance Corporation

7 CFR

401.117 Insured under FCIC (Soybean).

For each proposed unit, to maintain written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.118 Insured under FCIC (Canning and processing bean). [Added]

For each proposed unit, to maintain written, verifiable records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.119 Insured under FCIC (Cotton).

To maintain written, verifiable records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.120 Insured under FCIC (Rice).

To maintain written verifiable records of planted acreage and harvested production.

Retention period: At least the previous crop year.

401.121 Insured under FCIC (Extra long staple cotton).

To maintain written, verifiable records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.129 Insured under FCIC (Tobacco).

To maintain written verifiable records of planted acreage and harvested production.

Retention period: For at least the previous crop year.

401.139 Insured under FCIC (Fresh market tomato—Dollar Plan). [Added]

To maintain written, verifiable records of planted and harvested acreage and production for each optional unit.

401.140 Insured under FCIC (Pear).

To maintain written verifiable records of acreage and harvested production.

Retention period: For at least the previous crop year.

401.146 Insured under FCIC (Fresh plum). [Added]

To maintain written, verifiable records of acreage and harvested production.

Retention period: For at least the previous crop year.

Agricultural Stabilization and Conservation Service

7 CFR

723.313 Warehouse operators handling barley or flue-cured, dark air-cured, or Virginia sun-cured tobacco. [Added]

To make and keep records that will ensure separate accounting and reporting of each such kinds of tobacco quota and nonquota sold for auction over the warehouse floor.

Retention period: 3 years after the end of the marketing year.¹

723.403 Auction warehouse operators handling burley and flue-cured tobacco. [Added]

To keep separate records of (a) marketing (auction or nonauction sales

¹ Or for such longer period of time as may be requested in writing by the State ASCS Executive Director or the Director.

and purchases and resale of tobacco); (b) tobacco sales bills; (c) marketing card until the producer has been paid for the sales of the tobacco or the tobacco is removed from the warehouse by the producer at which time the marketing card shall be returned to the producer; (d) suspended sale and the sum of tobacco pounds sold; and (e) other such information as specified in cited section.

Retention period: 3 years after the end of the marketing year.¹

723.404 Dealers handling all kinds of tobacco except cigar tobacco. [Added]

To keep by kinds of tobacco, records of marketings, sales, nonauction purchases, and purchases and resales.

Retention period: 3 years after the end of the marketing year.¹

723.411 Firms engaged in storing unprocessed tobacco. [Added]

To keep records with respect to each lot received showing the name and address of producer, dealer, warehouse operator, marketing agent, or other person for whom the tobacco is received; the date and receipt of the tobacco; the number of pounds received; the amount of any advance or loan made by such firm; the disposition of the tobacco; and the person to whom delivered and the pounds involved.

Retention period: 3 years after the end of the marketing year.¹

723.411 Firms engaged in the business of processing tobacco. [Added]

To keep records with respect to each lot received showing the name and address of producer, dealer, warehouse operator, or other person for whom the tobacco was received; the date of receipt of tobacco; the number of pounds (green weight) received; the purpose for which tobacco was received (redrying or stemming); the amount of any advance or loan made by such person on the tobacco; the disposition of the tobacco including the net weight of the tobacco processed and the number of containers by classification (strips, stems, scrap or leaf); and the person to whom delivered and pounds involved.

Retention period: 3 years after the end of the marketing year.¹

723.411 Truckers hauling, processing, and storing tobacco. [Added]

To keep records as will enable such trucker to furnish the State ASCS office a report with respect to each lot of tobacco received showing the name and address of the producer; the date of receipt of the tobacco; the number of pounds received; the location where received; and the name and address of the person to whom it was delivered.

Retention period: 3 years after the end of the marketing year.¹

723.412 Persons engaged in tobacco related businesses. [Added]

To keep such records as will enable persons to make separate reports for each such business in which such persons are engaged to the same extent for each business as if the persons were engaged in no other business.

Retention period: 3 years after the end of the marketing year.¹

723.413 Warehouse operators, processors, buyers, dealers, truckers, or persons engaged in tobacco related businesses. [Added]

To keep records on a marketing year that are required by 7 CFR Part 723, Subpart D.

Retention period: 3 years after the end of the marketing year.¹

723.415 Warehouse operator, processors, dealers, buyers, truckers, or persons engaged in the business of sorting, redrying, stemming, picking, or otherwise processing tobacco for producers. [Added]

To maintain books, papers, records, adjustment invoices, accounts, canceled checks, check registers, check stubs, correspondence, contracts, documents, warehouse bill-out invoices or daily summary journal sheet, the tissue copy of Form MQ-72-1, Report of Tobacco Auction Sale, journal of producer marketing cards retained at warehouse. These records shall be available at one place for examination by representatives of the State ASCS executive director and by employees of the Office of Investigation and Office of Audit, and of the Tobacco and Peanuts Division of the ASCS, Agriculture Department upon written request by the State ASCS executive director.

Retention period: 3 years after the end of the marketing year.¹

724.95 Producers and producer-manufacturers of fire-cured, dark air-cured, Virginia sun-cured, cigar-binder, and cigar-filler and binder tobacco. [Removed]

724.96 Warehousemen handling burley, fire-cured, dark air-cured, Virginia sun-

cured, cigar-binder, cigar-filler and binder, and flue-cured tobacco. [Removed]

724.97 Dealers handling burley, fire-cured, dark air-cured, Virginia sun-cured, cigar-binder, cigar-filler and binder, and flue-cured tobacco. [Removed]

724.99 Cigar tobacco buyers and loan organizations. [Removed]

724.99 Dealers handling burley, fire-cured, dark air-cured, Virginia air-cured, cigar-binder, cigar-filler and binder, and flue-cured tobacco. [Removed]

724.100 Cigar tobacco buyers and loan organizations. [Removed]

724.101 Truckers and persons redrying, prizing, or stemming fire-cured, dark air-cured, Virginia sun-cured, cigar-binder, and cigar-filler and binder tobacco. [Removed]

724.102 Persons engaged in more than one business relating to tobacco. [Removed]

725.98 Producers of flue-cured and burley tobacco. [Removed]

725.99 Warehousemen handling burley, fire-cured, dark air-cured, Virginia sun-cured cigar-binder, cigar-filler and binder, and flue-cured tobacco. [Removed]

725.100 Dealers handling burley, fire-cured, dark air-cured, Virginia air-cured, cigar-binder, cigar-filler and binder, and flue-cured tobacco. [Removed]

725.103 Firms acting as marketing agents or processors for processed producer carryover tobacco. [Removed]

725.103 Firms storing processed or unprocessed producer owned tobacco. [Removed]

725.104 Firms storing processed or unprocessed producer owned tobacco. [Removed]

725.105 Truckers and firms redrying, prizing, or stemming flue-cured and burley tobacco, and storage firms. [Removed]

725.106 Persons engaged in more than one business relating to tobacco. [Removed]

725.115 Warehousemen handling burley, fire-cured, dark air-cured, Virginia sun-cured cigar-binder, cigar-filler and binder, and flue-cured tobacco. [Removed]

726.92 Producers of fire-cured and burley tobacco. [Removed]

¹ Or for such longer period of time as may be requested in writing by the State ASCS Executive Director or the Director.

726.93 Warehousemen handling burley, fire-cured, dark air-cured, Virginia sun-cured, cigar-binder, cigar-filler and binder, and fire-cured tobacco. [Removed]

726.94 Dealers handling burley, fire-cured, dark air-cured, Virginia air-cured, cigar-binder, cigar-filler and binder, and flue-cured tobacco. [Removed]

726.96 Truckers and firms redrying, prizing, or stemming fire-cured and burley tobacco, and storage firms. [Removed]

726.97 Persons engaged in more than one business relating to tobacco. [Removed]

726.105 Firms acting as marketing agents or processors for processed producer carryover tobacco. [Removed]

726.105 Firms storing processed or unprocessed producer owned tobacco. [Removed]

726.106 Firms storing processed or unprocessed producer owned tobacco. [Removed]

Agricultural Marketing Service

7 CFR

918.71 Handlers of fresh peaches grown in Georgia. [Added]

To maintain complete records which accurately show the quantity held, sold, and shipped.

Retention period: Not less than 2 years subsequent to the termination of each fiscal period.

955.60 Vidalia onion handlers. [Revised]

To maintain records of the Vidalia onions received and disposed of as may be necessary to verify reports submitted to the committee.

Retention period: At least 2 succeeding years.

982.453 Applicants (crushers, livestock feed manufacturers, and livestock feeders) purchasing substandard filberts/hazelnuts or filbert/hazelnut waste.

To maintain a record of receipts, holdings, and use of substandard filberts/hazelnuts available for examination by authorized representatives of the Board and the Department of Agriculture.

Retention period: 3 years after the end of the marketing year in which the recorded transactions are completed.

982.471 Filbert/hazelnut handlers.

(a) To maintain complete and accurate records showing the receipt, shipment, and sale of all filberts/hazelnuts handled, used or otherwise disposed of.

(b) To also maintain a current record of all filberts/hazelnuts held in inventory.

Retention period: 2 years—period as prescribed in 7 CFR 982.71

997.53 Peanut handlers. [Added]

To maintain such records of peanuts received, held and disposed of that will substantiate any required reports and will show performance.

Retention period: At least 2 years beyond the crop year of their applicability.

998.43 Peanut handlers.

To maintain records of peanuts received, held and disposed of, as will substantiate any required reports and will show performance under marketing agreement.

Retention period: At least 2 years beyond the crop year of their applicability.

1210.350 Watermelon handlers.

To maintain a record with respect to each producer for whom watermelon was handled and produced.

Retention period: 2 years beyond the fiscal period of their applicability.

1210.351 Watermelon handlers.

To maintain such books and records as are necessary to carry out the provisions of the Research and Promotion Plan and applicable regulations, including such records are necessary to verify any required reports.

Retention period: 2 years beyond the fiscal period of their applicability.

1210.530 Watermelon handlers. [Added]

To maintain one copy of each report made to the Board on the handling and disposition of exempted watermelons and such records as are necessary to verify such reports.

Retention period: 2 years beyond the marketing year of their applicability.

1250.352 Egg handlers. [Redesignated as 1250.353]

To maintain books and records necessary to carry out the provisions of the Egg Research and Consumer Information Act and to verify required reports.

Retention period: At least 2 years beyond the fiscal period of their applicability.

Commodity Credit Corporation

7 CFR

1475.13 Handlers, dealers, and warehousemen performing transactions with regard to delivery orders under the livestock feed program. [Redesignated, 1989; as 1475.14]

1475.14 Handlers, dealers, and warehousemen performing transactions with regard to delivery orders under the livestock feed program.

To maintain books and records which will permit verification of all transactions with regard to delivery orders.

Retention period: At least 3 full years following deliveries against delivery orders (or to be kept longer if requested by the Commodity Credit Corporation).

Foreign Agricultural Service

7 CFR

1530.109 Licensees exporting refined sugar requesting credit in accordance with 7 CFR 1530.107(b). [Added]

To keep records on the quantity and identity of the sugar, raw value entered under subheading 1701.11.02 of the HTS; the date or inclusive dates of processing (refining); the quantity and description of the articles produced and their polarities; the quantity of sugar refined basis, exported and transferred to a manufacturer and the identity of such manufacturer; the country of destination, foreign consignee, date of export, port, export carrier and any agent used in connection with the export and all documents relating to such exportation, including but not limited to any contract, invoice, bill of lading, dock receipt, ship's manifest, or copies thereof; and any drawback entry, including all related documents, filed by the licensee or any other person for a refund, as drawback, of any customs duties paid on the importation of any sugars, syrups, or molasses.

Retention period: At least 5 years after a license is credited for the exportation or transfer of the refined sugar.

1530.208 Licensees exporting sugar containing products requesting credit in accordance with 7 CFR 1530.206(b). [Added]

To keep records of the date or inclusive dates of manufacture; the quantity and identity of the sugar, refined basis, transferred to the licensee; the quantity and description of the articles manufactured; the quantity of sugar, refined basis, contained in the sugar containing products exported; the country of destination, foreign consignee, date of export, port, export carrier, and any agent used in connection with the export and all

documents relating to such exportation, including but not limited to any contract, invoice, bill of lading, dock receipt, ship's manifest or copies thereof; any drawback entry, including all related documents filed by the licensee or any other person for a refund, as drawback, of any customs duties paid on the importation of any sugars, syrups, or molasses.

Retention period: 5 years after a license is credited for the exportation of the sugar containing product.

1530.208 Licensees requesting credit for valueless sugar lost in normal product manufactured, destroyed, or otherwise disposed of. [Added]

To keep records to establish the quantity of valueless sugar lost, disposed of, or destroyed.

Retention period: 5 years after a license is credited for the exportation of the sugar containing product.

1530.210 Sugar containing products manufacturers. [Revised; new amendment contained no record retention requirements]

1530.308 Licensees importing sugar and producing polyhydric alcohols requesting credit in accordance with 7 CFR 1530.306(b). [Added]

To keep records of the quantity and identity of the sugar imported by the licensee; the quantity and description of the polyhydric alcohols manufactured and the date or inclusive dates of manufacture; the quantity of sugar actually used in the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols for use as a substitute for sugar in human food consumption; and if any polyhydric alcohols have been exported, the country of destination, foreign consignee, date of export, port, export carrier and any agent used in connection with the export and all documents relating to such exportation, including but not limited to any contract, invoice, bill of lading, dock receipt, ship's manifest, or copies thereof; and all drawback entries, if any, including all related documents, filed by the licensee or any other person, for a refund, as drawback, of any customs duties paid on the importation of any sugars, syrups, or molasses.

Retention period: At least 5 years after a license is credited for the production of the polyhydric alcohol.

Rural Electrification Administration 7 CFR

1715.25 Borrowers of insured or guaranteed electric loans under the RE Act.

To maintain accurate records containing all investments, loans, and guarantees.

Retention period: Not specified.

1765.47 Borrowers, engineers, and construction supervisors for outside plant major construction by force account method with REA loan funds. [Added]

(a) To maintain records on all expenditures for materials, labor, transportation, and other costs of construction, in order that all costs may be fully accounted for upon completion of construction.

(b) To maintain accurate and current inventories of completed construction.

Retention period: Not specified.

1765.70 Borrowers for minor construction of telecommunications facilities using REA loan funds. [Added]

To maintain accounting and plant records sufficient to document the cost and location of all construction and to support loan fund advances and disbursements.

Retention period: Not specified.

Part 1770 REA telephone borrowers. [Added]

(a) To maintain accounts, records and memoranda in such a manner as to fully support the journal entries to which they relate. The books and records referred herein shall include records of a nontechnical nature such as minute books, stock, and membership records, reports, correspondence, and memoranda.

(b) To maintain continuing property records which detail the date of placement, location, description of property, and the original cost of property record units. The continuing property records and other underlying records of construction costs shall be maintained so that upon retirements, units or minor items without replacement when not included in the costs of retirement units, the actual cost of the plant retired can be determined.

Farmers Home Administration 7 CFR

1940.911 Persons influencing the making of an FmHA housing loans and/or grant complying with the reporting and registration requirements. [Added]

To maintain records and documentation to support information contained in Forms FmHA 1940-39 and FmHA 1940-40.

Part 1944, Exhibit A Grantees conducting housing preservation programs benefiting very low-and low-income rural residents. [Removed, 1989]

Part 1944, Exhibit A to Subpart I Self-help Housing Technical Assistance Grantees. [Added]

To maintain financial records, supporting documents, statistical records, personnel records, and other records pertinent to grant agreement.

Retention period: 3 years after the termination or completion of the grant.

1948.47 Rural development grantees. [Removed, 1989]

1980.646 Grantees under the Nonprofit Corporations Loan and Grant Program. [Revised; new amendment contained no record retention requirements]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

9 CFR

2.35 Research facilities engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes.

To maintain Institutional Animal Care and Use Committee (IACUC) records, including minutes of the Committee meetings, records of any Committee activities and deliberations, records of proposed activities involving animals and proposed significant changes in those activities, the Committee's disposition of the proposed activity, and the Committee's reports of reviews and evaluation and any other records as specified in cited section.

Retention period: 3 years. Approved activity records—duration of the activity plus an additional 3 years after completion of the activity. All records must be available for inspection and copying by authorized APHIS or funding Federal agency representatives and must be retained pending completion of an investigation or proceeding under the Act.

2.75 Research facilities, exhibitors, operators of auction sales, carriers, intermediate handlers, and dealers engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes.

To keep (a) records with respect to the purchase, sale, transportation, identification, and previous ownership; (b) records with respect to water quality tests for marine mammal facilities; and (c) necropsy reports and records for marine mammals that die in captivity.

Retention period: (a) 1 year or longer as may be required by any Federal, State, or local law; (b) 1 year; (c) 3 years.

2.76 Research facilities, exhibitors, operators of auction sales, carriers, intermediate handlers, and dealers engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes.

See 2.75.

2.77 Research facilities, exhibitors, operators of auction sales, carriers, intermediate handlers, and dealers engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes.

See 2.75.

2.78 Research facilities, exhibitors, operators of auction sales, carriers, intermediate handlers, and dealers engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes. [Revised, 1989; new amendment contained no record retention requirements]

2.81 Research facilities, exhibitors, operators of auction sales, carriers, intermediate handlers, and dealers engaged in transportation, sale, and handling of certain warm blooded animals used for research, exhibition, or pet purposes. [Removed, 1989]

2.132 Dealers, exhibitors, research facilities, carriers, or intermediate handlers operating private or contract animal pounds or shelters.

To maintain accurate and complete records in accordance with 9 CFR 2.75 and 2.76, unless the animals are lost or stray. If animals are lost or stray, the pound or shelter records shall provide: (a) An accurate description of the animal; (b) how, where, from whom, and when the dog or cat was obtained; (c) how long the dog or cat was held by the pound or shelter before being transferred to the dealer; and (d) the date the dog or cat was transferred to the dealer.

Retention period: Not specified.

75.4 Owners of equine infectious anemia (EIA) reactors. [Added]

To maintain records relating to animals which are or have been in the stockyard.

Retention period: 1 year from the date the animal arrives at the stockyard.

92.11 Operators of quarantine facilities for imported birds. [Revised; record retention requirements in 92.106]

92.106 Operators of quarantine facilities for imported birds. [Added]

To maintain a current daily log and identification record for each lot of birds, recording such information as the general condition of the birds each day, source of origin of the birds in the lot, total number of birds in the lot when imported, number of dead birds when lot arrived, date lot was placed into the facility, number of deaths each day in the lot during the quarantine period, necropsy results, and laboratory findings on bird that died during the quarantine date of prescribed tests and results, and other such information as specified in cited section.

Retention period: 12 months following the date of release of the bird from quarantine. Records shall be made available to APHIS personnel upon request.

92.434 Supervisory veterinarians at privately operated quarantined facilities. [Added]

To maintain a current daily log for each sheet, recording such information as the individual identification of the sheep, source origin of the sheep in the lot, total number of sheep in the lot, total number of sheep in the lot when imported, number of dead or injured sheep when the lot arrived, the date the lot was placed into the facility, the general condition of the sheep each day, record of any medication administered to the sheep, number of deaths each day in the lot during quarantine period, and other such information as mentioned in cited section.

Retention period: 12 months following the date of the release of the sheep from quarantine. Such records shall be available to APHIS personnel upon request.

Packers and Stockyards Administration

9 CFR

203.4 Packers, live poultry dealers or handlers, stockyard owners and market agencies, and dealers subject to the provisions of the Packers and Stockyards Act.

To retain for the specified period of time the following records:

(a) Accounts, records and memoranda to fully and correctly disclose all transactions involved in business, including the true ownership of such business by stockholding or otherwise.

(b) Cutting tests; departmental transfers; buyers' estimates; drive sheets; scale tickets received from

others; inventory and products in storage; receiving records; trial balances; departmental overhead or expense recapitulations; bank statements, reconciliations and deposit slips; production or sale tonnage report (including recapitulations and summaries of routes, branches, plants, etc.); buying or selling pricing instructions and price lists; correspondence, telegrams, teletype communications and memoranda relating to matters other than contracts, agreements, purchase or sales invoices, or claims or credit memoranda.

Retention period: (a) 2 years or longer if directed by the Administrator in writing, pending completion of any investigation or proceeding under the Act; (b) 1 year.

NUCLEAR REGULATORY COMMISSION

10 CFR

26.20 Licensees authorized to operate nuclear power industries; fitness-for-duty program.

To retain a copy of current written policy and procedures as a record.

Retention period: Until the Commission terminates each license for which the policy and procedures are superseded; superseded material must be retained for 3 years after each change.

26.29 Licensees authorized to operate nuclear power industries; fitness-for-duty program.

To maintain records (a system of files and procedures) on the protection of personal information.

Retention period: Until the Commission terminates each license for which the system was developed.

26.71 Licensees authorized to operate nuclear power industries (also each contractor and vendor implementing licensee approved program under the provision of 10 CFR 26.23); fitness-for-duty program.

(a) To retain records of inquiries conducted in accordance with 10 CFR 26.27(a) that result in the granting of unescorted access to protected areas.

Retention period: Until 5 years following examination of such access authorizations.

(b) To retain records of persons made ineligible for assignment to activities within the scope of Part 10 under the provisions of 10 CFR 26.27(b)(2), (3), (4) or (c).

Retention period: 3 years or longer or until the Commission terminates each license under which the records were created.

(c) To retain records of confirmed positive test results which are concurred in by the Medical Review Officer, and the related personnel actions.

Retention period: At least 5 years.

(d) To retain fitness-for-duty program performance data and analysis. Such data shall include random testing rate; drugs tested for and cut-off levels, including results of tests using lower cut-off levels and tests for other drugs; workforce populations tested; numbers of tests and results by populations; and such other information as specified in cited section.

Retention period: 3 years.

26.60 Licensees authorized to operate nuclear power industries; fitness-for-duty program.

To maintain documentation of the resolution findings and corrective actions on audit of the effectiveness of the program.

Retention period: 3 years.

30.34 Nonexempt licensees manufacturing, producing, transferring, receiving, acquiring, owning, possessing, or using byproduct material. [Amended]

(a) To maintain such records as may be determined by the Commission to be necessary or appropriate to effectuate the purposes of the Atomic Energy Act of 1954, as amended, and the regulations issued thereunder.

Retention period: Unless otherwise specified by an appropriate regulation or license condition, until disposal is authorized by the Commission.

(b) To maintain results of each test of the generator eluates for molybdenum-99 breakthrough in accordance with 10 CFR 35.14(b)(4)(i) through (w).

Retention period: 3 years after the record is made.

(c) To maintain written directive made by the authorized user physician directing departures from the manufacturer's instructions in preparing radiopharmaceuticals and departures from package inserts for indication and method of administration for therapeutic use and record of the number of prescriptions dispensed under the departure in an auditable form.

Retention period: 5 years.

35.200 Licensees for certain groups of medical uses of byproduct material. [Added]

See 10 CFR 30.34.

35.300 Licensees for certain groups of medical uses of byproduct material.

See 10 CFR 30.34.

70.32 Licensees acquiring, delivering, receiving, possessing, using, transferring or receiving title to own special nuclear material.

To keep (a) such records of ownership, receipt, possession, use, and transfer of special nuclear material as may be incorporated as a condition or requirement in any license; (b) records of changes to the material control and accounting program made without prior Commission approval; (c) records of changes to the physical security plan made without prior Commission approval; (d) records of changes to licensee safeguards contingency plan made without prior Commission approval; (e) records of receipt, acquisition, or physical inventory of special nuclear material; (f) records of transfer of special nuclear material to other persons; (g) records of disposal of special nuclear material; (h) records of date and time of application of tamper-safing devices to containers or vaults; (i) material balance records for each material balance showing the quantity of element and fissile isotope in each component of the material balance; (j) a record summarizing the quantities of element and fissile isotope for ending inventory of material in process and additions and removals of material in process during material balance interval; (k) a record summarizing the quantities of element and fissile isotope in unopened receipts and ultimate products maintained under tamper-safing or in the form of sealed sources; (l) records needed to meet fundamental nuclear material controls requirements contained in 10 CFR 70.58, including (i) records which will provide information sufficient to locate special nuclear material and to close a measured material area and the total plant as specified in 10 CFR 70.51, (ii) records of results of review and audit of the nuclear material control system, and (iii) records of shipper-receiver difference evaluations, investigations, and corrective actions concerning special nuclear material received and shipped; (m) all data, information, reports, and documents generated by the measurement control program, including summary of error data utilized in limit of error calculations performed for each material balance period; and (n) records pertaining to training and qualification of personnel who perform measurement activities pursuant to 10 CFR 70.57(b)(7).

Retention period: (a) If not otherwise specified by regulation or license condition, until disposal is authorized by the Commission; (b) 5 years after date of change; (c) 3 years from date of change; (d) 3 years from date of change; (e) as long as licensee retains possession of

special nuclear material and for 3 years following transfer of special nuclear material; (f) until disposal is authorized by the Commission, or for 3 years for records required by 10 CFR 70.51(e)(1)(v) to document transfers of special nuclear material between material balance areas; (g) until disposal is authorized by the Commission; (h) if not otherwise specified by regulation or license condition, until disposal is authorized by the Commission; (i) 3 years; (j) 3 years; (k) 3 years; (l) and (l)(i) if not otherwise specified by regulation or license condition, until disposal is authorized by the Commission; (l)(ii) 3 years; (l)(iii) 3 years; (m) 3 years; (n) 3 years.

72.212 Licensees possessing, operating, or storing nuclear power reactors spent fuel in casks. [Added]

(a) To maintain a copy of the Certificate of Compliance and documents referenced in the certificate for each cask model used for storage of spent fuel, until use of the cask model is discontinued.

(b) To accurately maintain the record provided by the cask supplier for each cask that shows, in addition to the information provided by the cask vendor, the following: (1) The name and address of the cask vendor or lessor; (2) the listing of spent fuel stored in the casks; and (3) any maintenance performed on the cask.

Note: Record must include sufficient information to furnish documentary evidence that any testing and maintenance of the cask have been conducted under an NRC-approved quality assurance program. In the event that a cask is sold, leased, loan or otherwise transferred to another registered user, record must be transferred to and must be accurately maintained by the new registered user. This record must be maintained by the current cask user during the period that the cask is used for storage of spent fuel and retained by the last user until decommissioning of the cask is completed.

72.234 Cask vendors fabricating each cask under the NRC Certificate of Compliance. [Added]

To maintain records that include the NRC Certificate of Compliance number; the cask model number; the cask identification number; date fabrication was started; date fabrication was completed; certification that the cask was designed, fabricated, tested, and repaired in accordance with a quality assurance program accepted by NRC; certification that inspections required by 10 CFR 72.236(j) were performed and

found satisfactory; and the name and address of the cask user.

Note: The original of this record must be supplied to the cask user. A current copy of a composite record of all casks manufactured under a Certificate of Compliance, showing the above information, must be initiated and maintained by the cask vendor for each model cask. If the cask vendor permanently ceases production of casks under a Certificate of Compliance, this composite record must be sent to the Commission using instructions in 10 CFR 72.4.

ENERGY DEPARTMENT

10 CFR

430.62 Manufacturers of covered products subject to energy conversation standards.

To maintain records of the underlying test data for all certification testing. Such records should include the supporting test data associated with tests performed on and any test units to satisfy applicable requirements.

Retention period: 2 years from the date that production of the applicable model has ceased.

430.71 Manufacturers of covered products subject to energy conservation standards.

To maintain records that demonstrate that modifications have been made to all units of the new basic model prior to distribution in commerce to make noncompliance basic model comply with applicable performance standards.

Retention period: Not specified.

FEDERAL ELECTION COMMISSION

11 CFR

104.10 Political committees required to report expenses allocated among candidates and activities. [Added]

To retain all documents supporting the allocation and allocated disbursement on behalf of specific federal and non-federal candidates, in accordance with 11 CFR 104.14.

Retention period: 3 years.

FEDERAL RESERVE SYSTEM

12 CFR

202.12 Federal Home Loan Bank members.

In regards to business credit applications:

(a) To maintain in original form or a copy thereof: (1) any written or recorded information concerning the adverse action and (2) any written statement submitted by the applicant alleging a violation of the Equal Opportunity Act.

(b) To retain records in accordance with the new law on credit applications involving businesses with gross revenue of \$1 million or less.

Retention period: For 25 months (12 months for business credit) after the date that a creditor notifies an applicant of action taken on an application.

(c) To maintain at each association "decision center" loan application registers containing at a minimum certain data specified in the regulation.

Retention period: 25 months after date that a creditor notifies an applicant of action taken on the application.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR

325.5 Management of saving associations. [Added]

To maintain written record of the quarterly review of the book value of the purchased mortgage servicing rights.

TREASURY DEPARTMENT

Thrift Supervision Office

12 CFR

571.19 Insured institutions.

To maintain records of securities in accordance with generally accepted accounting practices and to support via documentation the appropriate classification of and accounting for securities in accordance with generally accepted accounting principles. To also document investment policy and strategies.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR

724.1 Federal credit unions acting as trustees and custodians of pension plans. [Added]

To maintain individual records for each participants which show in detail all transactions relating to the funds of each participant or beneficiary.

749.1 Federal credit unions participating in the establishment and maintenance of a records preservation program. [Added]

See 12 CFR 749.2.

FEDERAL HOUSING FINANCE BOARD

12 CFR

933.16 Federal Home Loan Bank members. [Removed]

933.31 Federal Home Loan Bank members other than FDIC savings banks. [Removed]

937.7 Federal Home Loan Bank members participating in the housing opportunity allowance program.

To retain a copy of each allowance application and the originals of all other closing documents.

Retention period: Not specified.

938.8 Federal Home Loan Bank members. [Removed]

939.6 Federal Home Loan Bank members receiving Federal financial assistance from the Federal Home Loan Bank Board.

To keep such records as the Bank Board may determine to be necessary to enable it to ascertain whether the recipient is complying with the regulation.

Retention period: Not specified.

OVERSIGHT BOARD

12 CFR

1506.6 Independent contractors. [Added]

To retain sufficient information that will permit the Board to make a determination regarding organizational conflicts of interest.

Retention period: 3 years following termination of expiration of the contract and shall be made available for review upon request, except to the extent that the disclosure is prohibited by law.

RESOLUTION TRUST CORPORATION

12 CFR

1606.6 Independent contractors. [Added]

See 12 CFR 1505.6.

SMALL BUSINESS ADMINISTRATION

13 CFR

115.7 Preferred Surety Bond Program (PSB) sureties.

To maintain all information and certifications required by SBS including a contemporaneous record of the date of issuance of each bond, in its file, for inspection by SBA or its agents and for submission to SBA in connection with claims made under SBA's guarantee.

Retention period: For the term of each bond, plus such additional time as may be required to settle claims for which the surety may seek recovery from SBA or attempt salvage or other recovery and for an additional 3 years thereafter.

115.17 Surety attorneys, contractors and subcontractors participating in the Surety Bond Guarantee (SBG) program. [Removed, 1989; record retention requirements now in 115.40]

115.18 Preferred Surety Bond Program (P^{CB}) sureties.

To maintain all documents, files, books, records, tapes, disks, and other material relevant to the surety bond guarantee, commitments to guarantee a surety bond, or agreements to indemnify the surety and other information as specified in cited section.

Retention period: For the term of each bond, plus such additional time as may be required to settle claims for which the surety may seek recovery from SBA or attempt salvage or other recovery and for an additional three years thereafter.

115.40 Surety attorneys, contractors and subcontractors participating in the Surety Bond Guarantee (SBC) program.

To maintain (a) the bond agreements; (b) all documentation submitted by the principal in applying for the bond; (c) all information gathered by the surety in reviewing the principal's application; (d) all documentation of any breach by the principal; (e) all records of any transactions for which surety makes payment pursuant to the bond, including but not limited to, copies of all claims, bills, judgments, settlement agreements, and courts or arbitration decisions, contracts and receipts; (f) all documentation relating to efforts to mitigate losses; and (g) records of any accounts to which fees and funds obtained in mitigation of losses have been paid, and from which payments have been made pursuant to the bond.

Retention period: 3 years beyond the term of each bond, plus such additional time as may be required to settle claims for which the surety may seek recovery from SBA or attempt salvage or other recovery.

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

14 CFR

91.54 Lessees and conditional buyers of U.S. registered large civil aircraft other than a foreign air carrier or certificate holder

under 14 CFR Parts 121, 123, 127, 135, or 141. [Removed, 1989]

91.173 Registered owners or operators of civil aircraft. [Revised, 1989; new amendment contained no record retention requirements; record retention requirements now in 91.417]

91.191 Operators of civil aircraft of United States registry in Category II operation.

To keep a current copy of the approved manual at principal base of operations.

Retention period: See 14 CFR 91.417.

91.417 Registered owners or operators of civil aircraft.

To keep (a) records of maintenance, preventive and alterations, 100-hour, annual, and progressive inspections, and other required or approved inspections for each aircraft, and for each airframe, engine, propeller, rotor, and appliance of an aircraft including a description of the work performed, the date the work was completed, and signature and certificate number of the persons approving the aircraft for return to service and (b) records of total time in service of airframe; current status of life limited parts of each airframe, engine, propeller, rotor, and appliance; time since last overhaul of all items required to be overhauled on a specified time basis; identification of current inspection status of aircraft, including time since last inspection required by inspection program under which aircraft and its appliances are maintained, current status of applicable airworthiness directives, including method of compliance; and a list of current major alterations to each air frame, engine, propeller, rotor, and appliance.

Retention period: (a) Until the work is repeated or superseded by other work or for 1 year after the work is performed; (b) transferred with the aircraft at the time the aircraft is sold.

91.419 Owners or operators who sell U.S. registered aircraft.

To maintain records specified in 14 CFR 91.417(a)(1) and (a)(2).

Part 121, SPAR No. 58 Domestic, flag, and supplemental air carriers and commercial operators of large aircraft; certificate holders and training centers holding Advanced Qualification Program (AQP) provisional approval. [Added]

To establish and maintain records in sufficient detail to establish the training, qualification, and certification of each person qualified under an AQP in accordance with the training, qualification, and certification requirements of this SFAR.

Retention period: Until Oct. 2, 1995, unless sooner.

221.260 Air carriers, foreign air carriers or tariff publishing agents.

To maintain all fares filed with the Department and all Departmental approvals, disapprovals, and other actions, as well as all Departmental notations concerning such approvals, disapprovals, or other actions, in the on-line-tariff database.

Retention period: For a period of 2 years after the fare becomes inactive.

COMMERCE DEPARTMENT

International Trade Administration

15 CFR

350.91 Individuals, corporations, partnerships, associations, or any other organized groups of persons participating in any transactions covered by the Defense Priorities and Allocation System. [Redesignated, 1989; as 700.91]

Export Administration Bureau

15 CFR

700.91 Individuals, corporations, partnerships, associations, or any other organized groups of persons participating in any transactions covered by the Defense Priorities and Allocation System.

To maintain accurate and complete records of any transactions covered by this regulation (OMB No. 0625-0107) or an official action in sufficient detail to permit the determination, upon examination, or whether each transaction complies with the provisions of this regulation or any official action.

Retention period: At least three years.

771.5 Exporters of certain commodities of limited value to Country Groups Q, T, and V under General License GLVF. [Added]

To keep records of all shipments made under General License GLV in accordance with the provisions of 15 CFR 787.13. These records must include sufficient information to permit the Bureau of Export Administration to verify the eligibility to each order that was shipped under General License GLV.

771.22 Exporters of commodities to be returned to the United States.

To retain all records of temporary exports to be returned to the United States as well as Customs Entry Number or any other evidence of disposition or commodities exported, i.e., freight bills or commercial invoices.

Retention period: See 15 CFR 787.13.

771.25 Exporters and Importers of "A" level commodities to COCOM participation countries under General License GCT. [Added]

To maintain records of transactions in accordance with 15 CFR 787.13.

772.11 Persons applying for export license, reexport authorization or amendment request. [Added]

To maintain original copies of supporting documents in file.

Retention period: 5 years.

772.12 Persons applying for new export license to replace expiring or expired license. [Added]

If required, to retain supporting documents on file. (See 15 CFR Part 775 for documentation requirements).

Retention period: 5 years.

774.3 Persons requesting licenses for reexport authorization for commodities not yet exported and previously exported. [Added]

To retain supporting documentation in file.

Retention period: 5 years.

775.2 Persons applying for an export license. [Added]

When the country of ultimate destination is in Country Group S or V (except for the People's Republic of China) and the commodity described on the application is not a supercomputer, to maintain a Form BXA-629P, statement by ultimate consignee and purchase in file.

Retention period: 5 years.

775.3 Persons applying for export license. [Added]

To retain international import certificate and delivery verification certificate on file.

Retention period: 5 years.

775.4 Persons applying for license to export commodities to Switzerland or Liechtenstein. [Added]

To retain on file the original copy of the Swiss Blue Import Certificate.

Retention period: 5 years.

775.5 Persons applying for a license to export commodities to Yugoslavia. [Added]

See 15 CFR 775.4.

775.7 Persons applying for license to export or reexport commodities to India. [Added]

See 15 CFR 775.4.

787.13 Export licenses—record retention. [Added]

(a) To keep records for a period of 2 years from the export from the United States; any known reexport, transshipment, or diversion, or any other termination of the transaction, whether

formally in writing or by any other means. Such records may be kept longer than the mandatory two-year retention period because the statute of limitation for criminal actions brought under the Export Administration Act of 1979 and its predecessor Acts is 5 years (18 U.S.C. 3282). The statute for compliance proceedings is also 5 years (28 U.S.C. 2462).

(b) Records relating to restrictive trade practice or boycott requests—3 years.

(c) The following records must be kept for 5 years:

(1) Shipper's Export Declaration covering exports made under a Project License.

(2) Swiss Blue Import Certificates, Yugoslav End-Use Certificates, and other records required for exports under a Distribution License.

(3) Swiss Blue Import Certificates, Yugoslav End-Use Certificates, and other records required for exports under the Service Supply Procedure; and

(4) Supporting documentation that must be retained in the applicants (export license) files.

National Oceanic and Atmospheric Administration**15 CFR****971.801 Licensees and permittees engaged in commercial recovery of deep seabed hard minerals.**

To maintain records consistent with standard accounting principles as specified by the Administrator in the license or permit. Such records shall include information which will fully disclose expenditures for exploration for, or commercial recovery of hard mineral resources in the area under license or permit, and any other information which will facilitate an effective audit of these expenditures.

COMMODITY FUTURES TRADING COMMISSION**17 CFR****1.35 Futures commission merchants, introducing brokers, and members of contract markets. [Revised]**

To maintain the required records, data, and memoranda in accordance with the requirements of 17 CFR 1.31. Such records shall include all orders (filled, unfilled, or cancelled), trading cards, signature cards, street books, journals, ledgers, cancelled checks, copies of confirmations, copies of statements of purchase and sale, and all other records, data and memoranda which have been prepared in the course of its business of dealing in commodity

futures, commodity options, and cash commodities.

Retention period: 5 years.¹

31.7 Leverage transaction merchants.

See 17 CFR 31.14.

SECURITIES AND EXCHANGE COMMISSION**17 CFR****230.428 Registrants; employee benefit plans. [Added]**

To maintain a file of the documents constituting a section 10(a) prospectus for Form S-8 registration statement.

Retention period: Until 5 years after documents are used as part of the section 10(a) prospectus to offer or sell securities pursuant to the plan. Upon request, the registrant shall furnish to the Commission or its staff a copy of any or all of the documents included in the file.

240.15a-6 Registered brokers or dealers through which transactions with the U.S. institutional investors or major U.S. institutional investors are effected.

(a) To maintain required books and records relating to the transactions, including those required by Rules 17a-3 and 17a-4 under the Act (17 CFR 240.17a-3 and 240.17a-4).

(b) To maintain written records of the information and consents required and all records in connection with trading activities of the U.S. institutional investor or the major U.S. institutional investor involving the foreign broker or dealer.

ENERGY DEPARTMENT**Federal Energy Regulatory Commission****18 CFR****161.3 Interstate pipelines.**

To maintain and make available for copying on a daily basis a written log of waivers that the pipeline grants with respect to tariff provisions that provide for such discretionary waivers.

Retention period: From Sept. 12, 1989 until Dec. 31, 1991.

250.16 Interstate pipelines with marketing affiliates. [Amended]

To maintain a log on all requests for transportation service made by

¹ After 3 years the person required to keep such books and records may at his/her option substitute photographic reproductions thereof on film, together with facilities for the projection of such film in a manner which will permit it to be readily inspected or examined. Under certain conditions, microfilm reproductions may immediately be substituted for hard copy.

affiliated marketers or in which an affiliated marketer is involved.

Retention period: From the time the information required in cited section is received until Dec. 31, 1991. The information required must be available from Sept. 12, 1988 until Dec. 31, 1992 to the Commission and the public.

277.210 Sellers and purchasers of natural gas. [Removed]

TREASURY DEPARTMENT

Customs Service

19 CFR

111.22 Licensed customs brokers. [Amended]

See 111.21.

111.23 Licensed customs brokers. [Amended]

See 111.21.

122.182 Employers who employ persons to work in security areas of airports handling international commerce. [Added]

To retain records of background investigations.

Retention period: 1 year following cessation of employment and records must be made available upon request of the district director.

143.37 Licensed custom brokers and importers. [Added]

See 19 CFR 111.21.

LABOR DEPARTMENT

Employment and Training Administration

20 CFR

629.21 Recipients, SDA grant recipients, and other subrecipients under Titles I, II, and III of the Job Training Partnership Act.

To maintain, in accordance with instructions from the Governor, documentation supporting the locally developed formula or procedure for needs-based payments, including maintenance of an individual record of the determination of the need for, and the amount of, any participant's needs-based payment.

Retention period: Not specified.

629.35 Recipients, SDA grant recipients, and other subrecipients under Title I, II, and III of the Job Training Partnership Act.

(a) To maintain records of each participant's enrollment in a JTPA program in sufficient detail to demonstrate compliance with the relevant eligibility criteria attending a particular activity and with the provision and duration of services and specific activities authorized by the Act.

(b) To also maintain records of such participant's information as may be necessary to develop and measure the achievement of performance standards established by the Secretary.

Retention period: 2 years from date of obligations of funds. Nonexpendable property—3 years after final disposition of the property. Records must be retained until litigation, audit, or claim has been resolved.

629.41 Recipients, SDA grant recipients and other subrecipients under Titles I, II, and III of the Job Training Partnership Act.

To maintain, subject to the Secretary of Labor's rights to such property, accountability for personal and real property procured with JTPA funds or transferred from programs under the Comprehensive Employment and Training Act in accordance with State procedures and the records retention requirements of §629.35.

Retention period: 3 years from date of obligation of funds. Nonexpendable property—3 years after final disposition of the property. Records will be retained until litigation, audit or claim has been finally resolved.

637.12 States participating in Title V of the Job Training Partnership Act activities. [Added]

To maintain written procedures for establishing the eligibility of individuals for whom an incentive bonus may be claimed and for tracking the activities that they comply with all statutory requirements necessary to qualify for an incentive bonus.

Retention period: See 20 CFR 629.35.

Effective date: January 28, 1991.

637.20 States participating in Title V of the Job Training Partnership Act activities. [Added]

To maintain adequate records to support all incentive bonus payment applications. Such records shall include documentation to support individual's eligibility.

Retention period: See 20 CFR 629.35.

Effective date: January 28, 1991.

655.310 Facilities using nonimmigrant aliens as registered nurses (H-1 or H-1A). [Added]

To maintain complete supporting documentation on substantial disruption (layoffs and nursing shortages); facility's nursing position; wages; State employment security agency determination; collectively bargained wage rates; determination of pay and total compensation; facility/employer wage; timely and significant steps; or State plan; systems for salary advancement; no strike or lockout; no

intention or design to influence bargaining election; and notice of filing.

Retention period: For the duration of the attestation period and for as long thereafter as the facility continues to employ an H-1A nurse hired under the attestation. The facility shall attest that the documentation will be available for public examination on a timely basis.

655.350 Facilities using nonimmigrant aliens as registered (H-1 or H-1A). [Added]

To maintain a separate file containing the attestation and required documentation. This file shall be made available to any interested parties within 72 hours upon written or oral request.

655.400 Facilities using nonimmigrant aliens as registered nurses (H-1 or H-1A). [Added]

See 20 CFR 655.350.

684.123 Center operators of Job Corps centers under Title IVB of the Job Training and Partnership Act. [Removed]

684.128 Center operators of Job Corps centers under Title IVB of the Job Training Partnership Act. [Removed]

684.129 Center operators of Job Corps centers under Title IVB of the Job Training Partnership Act. [Removed]

684.130 Center operators of Job Corps centers under Title IVB of the Job Training Partnership Act. [Removed]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

21 CFR

107.280 Manufacturers of infant formula.

To establish and maintain records on distribution of the infant formula through any establishment owned or operated by the manufacturer as may be necessary to effect and monitor recalls of the formula.

Retention period: 1 year after the expiration of the shelf life of the infant formula.

205.50 Wholesale drug distributors. [Added]

To maintain:

(a) Inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs.

Retention period: 2 years following distribution of the drugs.

(b) Written documentation of the disposition of outdated prescription drugs.

Retention period: 2 years after disposition of the outdated drugs.

291.505 Hospitals and other authorized dispensers of methadone.

To maintain clinical record for each patient showing dates, quantity, and batch or code mark of drug dispensed.

Retention period: 3 years.

291.505 Manufacturers of methadone.

To maintain signed invoices of methadone delivered to licensed practitioner.

Retention period: Not specified.

291.505 Sponsors of methadone maintenance programs.

To maintain for each patient an admission evaluation and records consisting of personal and medical history, physical examination, and such other information as necessary.

Retention period: Not specified.

606.100 Collectors and processors of whole blood (human) collected from human donors and processed for transfusion or further manufacturing. [Added]

See 21 CFR 606.151.

610.13 Manufacturers performing tests for residual moisture in biological products. [Added]

To maintain applicable records as required by 21 CFR 211.188 and 211.194.

610.18 Manufacturers of biological products. [Added]

To maintain results of all periodic tests for verification of cultures and determination of freedom from extraneous organisms as required by 21 CFR 211.188 and 311.194.

640.2 Collectors and processors of whole blood (human) collected from human donors for transfusion to human recipients. [Added]

(a) To maintain on the premises and file with the Center for Biologics Evaluation and Research, a manual of standard procedures and methods approved by the Director of the Center for Biologics Evaluation and Research, that shall be followed by employees who collect blood.

(b) To maintain records indicating the name and qualifications of the person immediately in charge of the employees who collect blood when a physician is not present on the premises.

640.4 Collectors and processors of whole blood (human) collected from human donors for transfusion of human recipients. [Added]

See 21 CFR 640.2.

640.33 Manufacturers of plasma collected by plasmapheresis. [Added]

See 21 CFR 640.71 and 640.72.

640.53 Manufacturers of Cryoprecipitated AHF obtained from plasma collected by plasmapheresis. [Added]

See 21 CFR 640.71 and 640.72.

JUSTICE DEPARTMENT

Drug Enforcement Administration

21 CFR

1310.03 Regulated persons engaging in regulated transactions involving listed chemicals, tableting machines and encapsulating machines.

To maintain records and file reports of the transactions as specified in 21 CFR 1310.04 and 1310.05.

(a) Records on listed precursor chemical, tableting machine, and encapsulating machine—4 years after the date of transaction.

(b) Records on listed essential chemicals—2 years after transaction.

1310.04 Regulated persons engaging in regulated transactions involving listed chemical, tableting machines, and encapsulating machines.

(a) Records required to be kept for a listed precursor chemical, a tableting machine, or an encapsulating machine—4 years after the date of the transaction.

(b) Records required to be kept for a listed essential chemical—2 years after the date of the transaction.

1310.06 Regulated persons engaging in regulated transactions involving listed chemicals, tableting machines, and encapsulating machines.

To keep records containing the following information: (a) The name and address of each party to the regulated transaction; (b) the date of the regulated transaction; (c) the name, quantity and form of packaging of the listed chemical or a description of the tableting machine or encapsulating machine (including make, model and serial number); (d) the method of transfer (company truck, picked up by customer, etc.); and (e) the type of identification used by the purchaser and any unique number on that identification.

Retention period: See 21 CFR 1310.03.

STATE DEPARTMENT

22 CFR

122.5 Persons required to register as manufacturers or exporters of United States Munitions List articles.

To maintain, subject to the inspection of the Secretary of State, or any persons designated by him, records on the exportation of articles enumerated in the United States Munitions List. Records shall contain all information pertinent to the transaction.

Retention period: 6 years, except that the Secretary may prescribe a longer or shorter period in individual cases if deemed necessary.

AGENCY FOR INTERNATIONAL DEVELOPMENT, INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

22 CFR

201.41 Borrowers/grantees receiving commodity and commodity-related services financed by A.I.D. [Revised]

To maintain records adequate to document the arrival and disposition in the cooperating country of all commodities financed by A.I.D. and to identify the importer (or the first purchaser of transferee if the commodity is imported by the borrower/grantee).

Retention period: 3 years following the date of payment or reimbursement by A.I.D. or for such other period as A.I.D. and the borrower/grantee agree.

201.74 Banks, commodity transactions financed by A.I.D.

In addition to documents required for reimbursement, to retain in file: (a) Each letter of credit issued, confirmed, or advised, together with any extension or modification thereof; (b) pamphlet instructions received from the approved applicant; (c) each application and agreement relating to such letter of credit or instructions for payment, together with any extension or modification thereof; and (d) a detailed advice of the interest, commissions, expenses, or other items charged by it in connection with each such letter of credit or payment instructions.

Retention period: 3 years.

211.10 Foreign governments, U.S. voluntary agencies, or intergovernmental organizations, except the World Food Program and United Nations Relief and Works Agency, involved in the transfer of food commodities for use in disaster relief, economic development, and other assistance. [Revised]

To maintain records and documents in a manner which will accurately reflect all transactions pertaining to the receipt, storage, distribution, sale, inspection, and use of commodities and pertaining to the receipt and disbursement of any monetized proceeds and program income and the operation of the program and records described in 22 CFR 211.5(i).

Retention period: For a period of 3 years from the close of the fiscal year to which they pertain, or longer. Upon request by A.I.D. for cause, such as in the case of litigation of a claim or an audit concerning such records, the cooperating sponsor shall transfer to

A.I.D. any records, or copies thereof, requested by A.I.D.

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Office of the Secretary

24 CFR

111.109 Agencies receiving support under the Fair Housing Assistance Program.

To maintain records determined appropriate by the Assistance Secretary.

111.121 Recipients under the Fair Housing Assistance Program.

To maintain records specified by the Assistant Secretary that clearly document performance under the award. Documents relevant to a recipient's program must be made available at the recipient's office during normal working hours for public review upon request, except that documents with respect to on-going fair housing complaint investigations will be exempt from public review. The Secretary, the Inspector General of HUD, and the Comptroller General of the United States, or any of their duly authorized representatives shall have access to all books, accounts, reports, files, and other papers of the recipients with respect to FHAP payments for surveys, audits, examinations, excerpts, and transcripts.

125.104 Recipients of funds under the Fair Housing Initiatives Program.

To maintain records determined appropriate by the Assistant Secretary.

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR

200.182 Assisted housing owners or mortgagees under the National Housing Act. [Removed, 1989]

201.2 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.4 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.6 Lending agencies with respect to property improvement and mobile home

loans. [Removed, 1989]

201.8 Lending agencies—Title 1. [Removed, 1989]

201.8 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.10 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.11 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.22 Lenders of Title I property improvement and manufactured home loans.

To maintain in the loan file all documentation supporting determination of solvency of borrower and any co-maker or co-signer and relating to review of the credit of the borrower and of any co-maker and co-signer and any other information regarding credit application of the borrower.

201.23 Lenders of Title I property improvement and manufactured home loans.

To maintain in the loan file, documentation of any required down payment.

201.26 Lenders of Title I property improvement and manufactured home loans.

To maintain in the loan file documentation of the site-of-placement inspection results.

201.27 Lenders of Title I property improvement and manufactured home loans.

To maintain on each approved dealer a file which contains the executed dealer approval form and supporting information together with documentation of the lender's experience with Title I loans involving the dealer. Such documentation shall include information about borrower defaults on such loans over time, records of completion or site-of-placement inspections conducted by the lender or its agent, copies of letters concerning borrowers' complaints and their resolution, and records of the lender's periodic review visits to dealer premises.

201.50 Lenders of Title I property improvement and manufactured home loans. [Removed, 1989]

201.171 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.520 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.525 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.545 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.570 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.575 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.595 Lending agencies—Title 1. [Removed, 1989]

201.605 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.610 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

201.665 Lending agencies with respect to property improvement and mobile home loans. [Removed, 1989]

205.127 Project mortgagors under the National Housing Act. [Removed]

Office of Assistant Secretary for Community Planning and Development

24 CFR

511.15 Grantees or state recipients under the Rental Rehabilitation Grant Program. [Added]

To keep a copy of each notification, inspection, and/or lead-based paint test report.

Retention period: At least 3 years.

511.73 Grantees or state recipients under the Rental Rehabilitation Grant Program. [Added]

To maintain records as specified by HUD that clearly document performance. Such records shall include (a) records required to comply with 24 CFR 511.75; (b) data on the racial, ethnic, gender, and income level characteristics of tenants occupying units before rehabilitation; tenants moving from and (initially after rehabilitation) into projects assisted under this program; applicants for tenancy within 90 days following completion of rehabilitation assisted under this program; and owners of the

projects rehabilitated; and (c) data indicating the race and ethnicity of households displaced as a result of program activities; and if available, the address and census tract of the housing units to which each displaced household relocated.

Retention period: 3 years from date of final closeout of the rental rehabilitation grant.

570.496a Recipients of the community development block grants. [Added]

To maintain records in sufficient detail to demonstrate compliance with displacement, relocation, acquisition, and replacement of housing provisions.

Retention period: Not specified.

570.506 Recipients of the community development block grants. [Revised]

To establish and maintain sufficient records (a) to enable the Secretary to determine whether the recipient has met applicable requirements, i.e., records providing a full description of each activity assisted (or being assisted) with CDBG funds, including its location (if the activity has a geographical locus); the amount of CDBG funds budgeted, obligated and expended for the activity; (b) to demonstrate that each activity undertaken meets one of the criteria set forth in 24 CFR 570.208, national objective of benefitting low and moderate income persons; and other information as specified in cited section.

Retention period: Not specified.

570.606 Recipients of the community development block grants. [Revised]

To maintain records in sufficient detail to demonstrate compliance with relocation and acquisition regulations.

Retention period: Not specified.

576.87 Grantees under the Emergency Shelter Grants Program: Stewart B. McKinney Homeless Assistance Act.

To maintain records that are necessary to document compliance with applicable regulations.

Retention period: 3 years period.

577.305 Recipients of assistance under the Transitional Housing Program.

To keep any records that HUD may require.

577.335 Recipients of assistance under the Transitional Housing Programs.

To keep a copy of each lead-based paint inspection report.

Retention period: At least 3 years.

578.305 Recipients of assistance under the Permanent Housing for Handicapped Homeless Persons Program.

To keep any records that HUD may require.

579.305 Recipients of the supplemental assistance for facilities to assist the homeless.

To maintain any records that HUD may require.

579.325 Recipients of the supplemental assistance for facilities to assist the homeless.

(a) To keep a copy of each lead-based paint inspection report.

Retention period: At least 3 years.

(b) To keep the test results and, if applicable, the certification of treatment indefinitely if a unit requires testing, or treatment of chewable surfaces based on the testing.

590.25 Local urban homesteading agencies.

To maintain adequate financial records, property disposition documents, supporting documents, statistical records and all other records pertinent to the local urban homesteading program until fee simple title has been conveyed to all homesteaders, generally a five-year period. To also maintain current and accurate data on the race and ethnicity of program beneficiaries.

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR

885.740 Borrowers; Section 202 Projects for Nonelderly Handicapped Families and Individuals—Section 162 Assistance.

(a) To keep a copy of each lead-based paint surface inspection report.

Retention period: 3 years.

(b) To keep a record of the test results if a unit requires testing or treatment of chewable surfaces based on the testing, and if applicable, the certification of treatment indefinitely. The records must indicate which chewable surfaces in the units have been tested or treated.

885.950 Borrowers; Section 202 Projects for Nonelderly Handicapped Families and Individuals—Section 162 Assistance.

To maintain records on applicants and approved eligible families which provide racial, ethnic, gender, and place of previous residency data required by HUD.

Retention period: 3 years.

885.972 Borrowers; Section 202 Projects for Nonelderly Handicapped Families and Individuals—Section 162 Assistance.

To maintain records of the amount in a segregated interest-bearing account that is attributable to each family in residence in the project.

Office of the Assistant Secretary for Public and Indian Housing

24 CFR

905.165 Indian Housing Authorities (IHAs). [Added]

To maintain documentation in its files for HUD review a copy of the determination where the provision of preference in Indian contracting, employment, and training is infeasible.

Retention period: 3 years.

905.175 Indian Housing Authorities (IHAs). [Added]

To maintain documentation of efforts in providing Indian preference. To also include as part of documentation a statement explaining the reasons for lack of Indian participation if no quotations are solicited or received from Indian-owned economic enterprises or Indian organizations.

Retention period: Not specified.

905.204 Indian Housing Authorities (IHAs). [Removed; record retention requirements now in 905.165]

905.416 Indian Housing Authorities (IHAs). [Added]

To maintain a waiting list, separate from any other IHA waiting list, of families that have applied for Multiple Help (MH) housing and that have been determined to meet the admission requirements in accordance with requirements prescribed by HUD.

Retention period: Not specified.

905.446 Indian Housing Authorities (IHAs). [Added]

To maintain a record of the meetings with the homebuyer, written plans of action agreed upon, and other related steps taken on termination of a Mutual Help and Occupancy Agreement (MHO).

Retention period: Not specified.

905.505 Indian Housing Authorities (IHAs). [Added]

To maintain a waiting list, separate from any other IHA waiting list, of families that have applied for Turnkey III housing and that have been determined to meet the admission requirements. To also maintain a Turnkey III waiting list based on date of application, suitable type or size of units, and factors affecting preference or priority established by IHA's regulations.

Retention period: Not specified.

905.525 Indian Housing Authorities (IHAs). [Added]

To retain all residual receipts from the operation of the project in a replacement reserve, including payments received on

account of any additional purchase price schedules applicable to the homes.

Retention period: Not specified.

905.625 Indian Housing Authorities (IHAs). [Added]

To retain copies of the signed home participation agreements in file for inspection by the HUD office.

905.715 Indian Housing Authorities (IHAs). [Added]

To maintain appropriate utility records, satisfactory to HUD so that a 36-month rolling average utility consumption per month under the rolling base period system can be determined.

Retention period: Not specified.

905.730 Indian Housing Authorities (IHAs). [Added]

To retain supporting documentation substantiating requested adjustments of base year expense level, estimated investment income, and utilities expense level.

Retention period: Not specified.

905.760 Indian Housing Authorities (IHAs). [Added]

To maintain a record of computation of actual occupancy percentage if an average is elected.

Retention period: Not specified.

905.885 Indian Housing Authorities (IHAs). [Added]

To maintain a record that documents the basis on which utility allowances and scheduled surcharges and revision thereof are established and revised. Such records shall be available for inspection by tenants. To also maintain written comments of tenants on proposed utility allowances or scheduled surcharges or revision.

Retention period: Not specified.

905.937 Indian Housing Authorities (IHAs). [Added]

To maintain records of HUD-approved project disposition or demolition sufficient for audit by HUD to determine compliance with applicable requirements of Federal law and 24 CFR part 905.

968.110 Public Health Agencies (PHAs) receiving assistance under the Comprehensive Improvement Assistance Program.

To maintain books, documents, papers, or other records that are pertinent to program activities in order to make audit examinations, excerpts, and transcripts.

968.226 Public Health Agencies (PHAs) receiving assistance under the Comprehensive Improvement Assistance Program. (CIAP).

To retain in its file for inspection by HUD the signed agreement from each participating homebuyer family that it will amend its homebuyer agreement upon approval of the application.

Office of Assistant Secretary for Housing—Federal Housing Commission

24 CFR

1710.15 Developers of multiple site divisions (fewer than 100 lots).

To maintain a copy of the written Lot Information Statement Acknowledgement.

Retention period: 3 years.

TREASURY DEPARTMENT

Internal Revenue Service

26 CFR

1.44c-3(1) Residential energy credit. [Redesignated as 1.123-3]

To maintain records that clearly identify the energy-conserving components and renewable energy source property with respect to which a residential energy credit is claimed, and substantiate their cost to the taxpayer, any labor costs properly allocable to them paid for by the taxpayer, and the method used for allocating such labor costs.

1.163-5 Persons issuing debt obligations to foreign persons; Tax Equity and Fiscal Responsibility Act of 1982 and the Tax Reform Act of 1986. [Added]

To maintain the certificate. Statements by member organizations must be retained by the clearing organization in the case of certificates based on such statements.

Retention period: 4 calendar years following the year in which the certificate is received.

1.936-10T Qualified recipients and financial intermediaries investing in Qualified Caribbean Basin Countries.

To maintain all necessary books and records that are sufficient to verify that the funds were used for investment in active business assets or development projects in conformity with the terms of the loan agreement.

5h.6 Electing owners, issuers, purchasers, and all successors in interest to the electing owners or purchasers; Technical Miscellaneous Revenue Act of 1986.

(a) To retain the original election document or a copy thereof in its records.

Retention period: Until 6 years after the later of the date the last bond that is part of the issue is retired or the date such owner, purchaser or successor in interest ceases to own the facilities.

(b) To retain a copy of the election.

Retention period: Until 6 years after the date the last bond that is part of the issue is retired.

35a.3406-1 Payors to backup withhold due to notification of an incorrect taxpayer identification number.

To maintain sufficient records to determine whether the payor has received notification of two incorrect taxpayer identification numbers within a 3-year period.

48.4041-21T Sellers of diesel fuel for use as a fuel in a diesel-powered highway vehicle. [Redesignated as 48.4041-21 and amended]

To maintain supporting records with respect to the tax imposed by section 4041 (whether or not such seller incurs liability for such tax).

Retention period: For at least 3 years after the due date of the tax return for the return period to which the records relate, or the date such tax is paid, whichever is later.

48.4041-21T Qualified retailers of diesel fuel for use as a fuel in a diesel-powered highway vehicle. [Redesignated as 48.4041-21 and amended]

(a) To maintain sufficient records of sales to establish the purpose for which the liquid is sold, and the person(s) to whom sold.

(b) To maintain supporting records with respect to the tax imposed by section 4041 (whether or not the qualified retailer incurs liability for such tax) when making a valid election.

Retention period: For at least 3 years after the due date of the tax return for the return period to which the records relate, or the date such tax is paid, whichever is the later.

52.4682-2T Persons purchasing the ozone-depleting chemicals for use as a feedstock. [Added]

To retain the business records needed to document (a) the sales covered by the certificates; (b) the use as a feedstock of the ozone-depleting chemicals to which the certificate applies; and (c) the use in the manufacture of rigid foam insulation of the ozone-depleting chemicals to which the certificate applies.

Such records will be made available for inspection by Government officers.

52.4682-4T Persons holding ODCs (Ozone-depleting chemicals) that are held for sale or for use in further manufacture and that were not manufactured or imported by such persons. [Added]

To maintain records of the inventory of all ODCs held on the day which the tax is imposed. Such records must be made available for inspection and copying by internal revenue agents and officers. Records are not to be filed with IRS.

56.4911-6 Electing public charities. [Added]

To keep records of lobbying and grass roots expenditures.

301.67216-2T Tax return preparers. [Added]

To maintain record of the review including the tax return information reviewed and the identity of the persons conducting the review.

Retention period: For the period that is prescribed for the retention of permanent books of account and records under 26 CFR 1.6001-1(e).

TREASURY DEPARTMENT

Bureau of Alcohol, Tobacco and Firearms

27 CFR

19.36 Proprietors of distilled spirits plants. [Added]

To maintain a permanent record of the standard effective tax rate established for each product in accordance with 27 CFR 19.765.

19.38 Proprietors of distilled spirits plants. [Added]

To maintain an inventory reserve record as prescribed by 27 CFR 19.764.

19.682 Proprietors of distilled spirits plants. [Added]

To maintain credit memoranda or comparable financial records evidencing the return of each lot of spirits. See also 27 CFR 19.761

19.761 Proprietors of distilled spirits plants. [Added]

To maintain record of tax determination on total proof gallons and if applicable, each effective tax rate and the proof gallons removed at each effective tax rate.

19.762 Proprietors of distilled spirits plants. [Added]

To maintain daily summary records of tax determinations. The summary records will show for each day on which tax determinations occur (a) the serial numbers of tax determination, the total proof gallons, rounded to the nearest tenth proof gallon on which tax was

determined at each effective tax rate, and the total tax; or (b) the serial numbers of the records of tax determination, the total tax for each record of tax determination and the total tax.

19.763 Proprietors of distilled spirits plants. [Added]

To maintain record of average effective tax rates.

19.764 Proprietors of distilled spirits plants. [Added]

To maintain inventory reserve records for each eligible distilled spirits product to be tax determined in accordance with 27 CFR 19.38.

19.770 Proprietors of distilled spirits plants. [Amended]

To maintain transfer records.

Retention period: 3 years.

24.53 Taxpayer subject to special (occupational) tax for multiple locations and/or classes of taxes. [Added]

To retain at the taxpayer's principal place of business one copy of the list showing, by States, the name, address, and tax class of each location for which special (occupational) tax is being paid.

Retention period: See 27 CFR 24.300.

24.77 Scientific universities, colleges of learning or institutions of scientific research authorized to conduct wine experimental or research operations. [Added]

To maintain (a) approved qualifying documents and applications in the file; (b) records appropriate to the experiments to be conducted; and (c) records documenting disposition of the wine and wine spirits. Records will be made available for inspection by ATF officers.

24.96 Proprietors of bonded wineries. [Added]

To maintain records of all samples taken for analysis or testing, showing the size of each sample, the kind of wine or wine spirits, date of removal, and the name and address of where sent.

Retention period: See 27 CFR 24.300.

24.97 Proprietors of bonded wineries. [Added]

(a) To maintain records showing the size, kind of wine or wine spirits, and date and disposition of each sample retained as a laboratory sample.

(b) If a room or area is set aside for public tasting purposes, to maintain records showing the date, quantity and kind of wine transferred to the room or area for testing.

Retention period: See 27 CFR 24.300.

24.136 Proprietors of bonded wineries. [Added]

(a) To maintain records of all transfer of wine, spirits and other accountable materials.

(b) To maintain records showing the name and registry number of the incoming or outgoing proprietor, the effective date and hour of alternation, and the quantity in gallons and the percent alcohol by volume or proof of any wine, spirits, or other accountable materials transferred or received.

Retention period: See 27 CFR 24.300.

24.226 Proprietors of bonded wineries. [Added]

To maintain a copy of the transfer record, annotated to show any difference between the description of spirits and quantity received as a record of receipt.

Retention period: See 27 CFR 24.300.

24.237 Proprietors of bonded wineries. [Added]

To maintain separate record on spirits that are added to juice or concentrated fruit juice.

Retention period: See 27 CFR 24.300.

24.243 Proprietors of bonded wineries. [Added]

To maintain records required by 27 CFR 24.301 if the inert material is dissolved in water prior to addition to wine in the cellar treatment and finishing of wine.

24.249 Proprietors of bonded wineries. [Added]

To maintain records of the kind and quantity of material received and used and the volume of wine treated and the manner by which disposed in experiments with new treating material or process.

Retention period: See 27 CFR 24.300.

24.257 Proprietors of bonded wineries. [Added]

To maintain records on labeling wine containers subject to recordkeeping requirements of 27 CFR 24.315.

24.272 Proprietors of bonded wineries. [Added]

To maintain the transfer data record furnished through normal banking practices as record of tax payment when financial institution make an electronic fund transfer in the amount of the taxpayment to the Treasury Account.

Retention period: See 27 CFR 24.300.

24.281 Proprietors of bonded wineries. [Added]

To maintain one copy of the transfer record for the file when transferring wine in bond.

Retention period: See 27 CFR 24.300.

24.282 Proprietors of bonded wineries. [Added]

To maintain one copy of the shipping or delivery order in multiple transfers of wines by trucks or pipelines.

Retention period: See 27 CFR 24.300.

24.284 Proprietors of bonded wineries. [Added]

To maintain the original of the transfer record and any accompanying documents when wine is received by transfer bond.

Retention period: See 27 CFR 24.300.

24.291 Proprietors of vinegar plants. [Added]

To maintain records of all wine received and used for the manufacture of vinegar and of all vinegar produced and disposed of when wine is shipped without payment of tax.

Retention period: See 27 CFR 24.300.

24.293 Proprietors of bonded wineries. [Added]

To maintain a copy of the bill of lading covering the shipment, with the ATF F 5120.17, Monthly Report of Wine Cellar Operations, for the month in which the shipment by common carrier of wine for Government use is made.

Retention period: See 27 CFR 24.300.

24.294 Proprietors of bonded wineries. [Added]

To maintain records of the volume of wine destroyed.

Retention period: See 27 CFR 24.300.

24.295 Proprietors of bonded wineries. [Added]

To maintain records covering each lot of unmerchantable taxpaid wine returned in bond in accordance with 27 CFR 24.311.

Retention period: See 27 CFR 24.300.

24.300 Proprietors of bonded wineries. [Added]

To maintain wine transaction records. Transactions records may be recorded in wine gallons or in liters.

Retention period: All prescribed returns, reports and records (including source records) will be retained by the proprietor for a period of not less than three years from the record date or the date of last entry required to be made in the record, whichever is later. However, the regional director (compliance) may require records to be kept an additional period not exceeding three years in any case where record retention is determined to be necessary.

24.301 Proprietors producing or receiving still wine in bond (including wine intended for use as distilling material or vinegar stock to which water has not yet been added). [Added and amended]

To maintain records of transactions for bulk still wine.

Retention period: See 27 CFR 24.300.

24.302 Proprietors producing or receiving sparkling wine or artificially carbonated wine in bond. [Added]

To maintain records showing the transaction date and details of production, receipt, storage, removal, and any loss incurred. Records will be maintained for each specific process used (bulk or bottle fermented, artificially carbonated), and by the specific kind of wine, e.g., grape, pear, cherry.

Retention period: See 27 CFR 24.300.

24.303 Proprietors producing beverage formula wine. [Added]

To maintain records showing by transaction date the details of production.

Retention period: See 27 CFR 24.300.

24.304 Proprietors chaptalizing (Brix adjustment) or ameliorating juice or wine, or both. [Added]

To maintain records of the operation and transaction date. Records will contain the information necessary to enable ATF officers to readily determine compliance with chaptalization and amelioration limitations.

Retention period: See 27 CFR 24.300.

24.305 Proprietors sweetening natural wine with sugar or juice (unconcentrated or concentrated). [Added]

To maintain record of sweetening by transaction date.

Retention period: See 27 CFR 24.300.

24.306 Proprietors producing or receiving wine containing excess water which will be used expressly as distilling material or vinegar stock. [Added]

To maintain records by transaction date showing the amount and kind produced, received, from whom received, removed, and to whom sent. To also keep a record of each type of material from which the distilling material or vinegar stock was fermented (e.g., grape, fruit, berry).

Retention period: See 27 CFR 24.300.

24.307 Proprietors producing nonbeverage wine or wine products. [Added]

To maintain a record by transaction date of such wine produced, received, and withdrawn.

Retention period: See 27 CFR 24.300.

24.308 Proprietors bottling, packing, or receiving bottled or packed beverage wine in bond. [Added]

(a) To maintain a record, by tax class, of the date, kind of wine, the number and size or other container filled (if not available in another record), and volume of wine bottled or packed, received in bond, returned to bond, and removed.

(b) To maintain record of fill tests and alcohol tests required by 27 CFR 24.255 for each lot of wine bottled or packed, or for each bottling or packing line operated each day, showing the date, type of test, item tested and the test results.

Retention period: See 27 CFR 24.300.

24.309 Proprietors of transferring wine in bond. [Added and amended]

To maintain transfer records showing the name, address and registry number of the proprietor; the name, address and registry number of the consignee; the shipping date; the kind of wine (class and type); the alcohol content or the tax class; the number of cases or containers larger than four liters; and other such information as specified in cited section.

Retention period: See 27 CFR 24.300.

24.310 Proprietors removing wine from bond for consumption or sale on determination of tax. [Added]

To maintain a record of wine removed at the time of removal either to taxpaid wine premises, or for direct shipment.

Retention period: See 27 CFR 24.300.

24.311 Proprietors who have taxpaid United States or foreign wine on taxpaid wine premises or on taxpaid wine bottling house premises. [Added]

To maintain records of receipt, removals, and cases or containers filled.

Retention period: See 27 CFR 24.300.

24.312 Proprietors of bonded wineries. [Added]

To maintain records of any unmerchantable taxpaid wine returned to bond.

Retention period: See 27 CFR 24.300.

24.313 Proprietors of bonded wineries. [Added]

To maintain record of the physical inventory of all wine and spirits in storage at the close of business for each tax year, or where a different cycle has been established, the inventory will be taken at the end of that annual period. The inventory records will include: (a) Description of wine; (b) bulk containers; (c) the total volume of cases, bottled and other similar containers; and (d) inventory summary.

Retention period: See 27 CFR 24.300.

24.314 Proprietors of bonded wineries. [Added]

To maintain label information records.
Retention period: See 27 CFR 24.300.

24.315 Proprietors producing wine. [Added]

(a) *General.* To maintain records showing the receipt and use or other disposition of basic winemaking materials received on wine premises. Where grapes (or other fruit) received on wine premises are used in producing juice to be stored for future use or for removal, the record will show the quantity used and the juice produced.

(b) *Concentrated fruit juice.* To maintain records showing the degrees Brix of the juice before and after concentration, the volume of juice before and reconstitution, the volume of reconstitution water used for each dilution of the concentrate, and if volatile fruit flavor was added, the kind and volume.

(c) *Volatile fruit-flavor concentrate.* To maintain records showing the volume received, the fold, the percent of alcohol by volume, any loss in transit, and the use of other disposition of the volatile fruit-flavor concentrate, and other such information as specified in cited section.

Retention period: See 27 CFR 24.300.

24.316 Proprietors receiving, storing, or using spirits. [Added]

To maintain records of receipt and use showing the date of receipt, from whom received, and the kind and proof gallons. The spirits record will also show by date and proof gallons the spirits used or removed from bonded wine premises, and on hand will be summarized and the account balanced at the end of the month and reported on the ATF 5120.17.

Retention period: See 27 CFR 24.300.

24.317 Proprietors receiving, storing, or using sugar. [Added]

(a) To maintain records showing the date of receipt, from whom received, and the kind and quantity.

(b) To retain invoices covering purchases.

(c) When sugar is used for chaptalization (Brix adjustment), amelioration or sweetening, the record will show the date, kind, and quantity used. The sugar record will also show sugar used in the production of allied products and any sugar removed from the wine premises.

Retention period: See 27 CFR 24.300.

24.318 Proprietors adding acid to correct a natural deficiency in juice or wine or to stabilize wine. [Added]

To maintain records showing date of use, the kind and quantity of acid used, the kinds and volume of juice or wine in which used, and, when used to correct natural deficiency, the fixed acid level of juice or of wine before and after the addition of acid. The record will account for all acids received and be supported by purchase invoices.

Retention period: See 27 CFR 24.300.

24.319 Proprietors using carbon dioxide in still wine. [Added]

To maintain records of the laboratory tests conducted to establish compliance with the limitations prescribed in 27 CFR 24.245.

Retention period: See 27 CFR 24.300.

24.320 Proprietors using chemicals, preservatives, or other such materials. [Added]

To maintain records of the purchase, receipt and disposition of chemicals, preservatives, or other such materials. The records will show the kinds and quantities received, the date of receipt, and the names and addresses from whom purchased. A record of use in juice or wine of any of these materials, except for filtering aids, inert fining agents, sulfur dioxide, carbon dioxide, nitrogen and oxygen, will be maintained, showing the kind, quantity, and date of use, and kind and volume of juice or wine in which used.

Retention period: See 27 CFR 24.300.

24.321 Proprietors treating juice or wine to remove excess color with activated carbon or any other decolorizing material. [Added]

To maintain records showing (a) the date the decolorizing material is added to the juice or wine; (b) the type (e.g., grape variety or kind of wine) and volume of juice or wine treated with decolorizing material; and (c) the kind and quantity of decolorizing material used to treat the juice or wine.

Retention period: See 27 CFR 24.300.

55.122 Licensed importers of explosive materials. [Amended]

(a) To keep accurate physical inventories which will include all explosive materials on hand required to be accounted for.

(b) To maintain records on importation or other acquisition of explosive materials.

(c) To maintain records on the distribution of any explosive material to another licensee or a permittee.

(d) To maintain separate records of the sales or other distribution made of

explosive materials to nonlicensees or nonpermittees.

Retention period: 5 years from the date a transaction occurs or until discontinuance of business or operations.

55.123 Licensed manufacturers of explosive materials. [Amended]

(a) To keep accurate physical inventories which will include all explosive materials on hand.

(b) To keep records of manufacture or other acquisition of explosive materials.

(c) To keep records of the distribution of any explosive materials to another licensee or a permittee.

(d) To maintain records on date of use, quantity, description and size of explosive materials when manufacturers manufacture explosive materials for own use.

(e) To maintain separate records of the sales or other distribution made of explosive materials to nonlicensees or nonpermittees.

Retention period: 5 years from the date a transaction occurs or until discontinuance of business or operations.

55.124 Licensed dealers of explosive materials. [Amended]

(a) To keep accurate inventories which will include all explosive materials on hand.

(b) To keep records of purchase or other acquisition of explosive materials.

(c) To maintain records of the distribution of any explosive materials to another licensee or permittee.

(d) To maintain separate records of the sales or other distribution made of explosive materials to nonlicensees or nonpermittees.

Retention period: 5 years from the date a transaction occurs or until discontinuance of business or operations.

55.125 Licensed manufacturers—limited and permittees of explosive materials. [Amended]

(a) To keep accurate physical inventories which will include all explosive materials on hand.

(b) *Licensed manufacturers—limited.* To maintain separate records of disposition of surplus stocks of disposition of surplus stocks of explosive materials and commercially manufactured black powder.

(c) *Permittees.* (1) To maintain records of the acquisition of explosive materials and (2) to maintain separate records of the disposition of surplus explosive materials to another permittees licensees, nonlicensees, or permittees and commercially black powder.

Retention period: 5 years from the date a transaction occurs or until discontinuance of business or operations.

55.127 Licensees or permittees manufacturing, importing, or distributing explosive materials. [Revised]

To maintain daily summary of magazine transactions.

Retention period: 5 years from the date a transaction occurs or until discontinuance of business or operations.

170.112 Persons liable for floor stocks tax on alcoholic beverages and imported perfumes held for sale on Jan. 1, 1991. [Added]

(a) To maintain a copy of the floor stocks tax return at the place of business covered thereby, or, in the case of a consolidated return, at the principal place of business.

(b) To maintain record of physical inventory at the place of business to which the inventory pertains.

(c) In the case of a consolidated return, to keep a copy of the record of inventory at the taxpayer's principal place of business.

Retention period: At least 3 years after the date of filing of the floor stocks tax return and shall be available for inspection by ATF officers. The regional director (compliance) may request retention for an additional 3 years if retention is determined to be necessary or advisable.

170.116 Persons liable for floor stocks tax on alcoholic beverages and imported perfumes held for sale on Jan. 1, 1991. [Added]

See 27 CFR 170.112.

170.687 Proprietors of bonded wine cellars. [Removed]

170.690 Proprietors of bonded wine cellars. [Removed]

170.691 Proprietors of bonded wine cellars. [Removed]

170.691 Proprietors producing nonbeverage wines. [Removed]

197.130 Manufacturers of nonbeverage products claiming drawbacks. [Amended]

See 197.95

231.110 Proprietors of taxpaid wine

bottling houses. [Removed]

231.112 Proprietors of taxpaid wine bottling houses. [Removed]

231.113 Proprietors of taxpaid wine bottling houses. [Removed]

231.114 Proprietors of taxpaid wine bottling houses. [Removed]

240.134 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.363 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.366 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.367 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.368 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.382 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.383 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.384 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.385 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.406 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.407 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.408 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.409 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.484 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.485 Proprietors of bonded wine

cellars. [Part 240 was redesignated as Part 24 and revised]

240.486 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.487 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.526 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.527 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.527a Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.547 Universities, colleges of learning, and institutions of scientific research authorized to conduct wine experimental or research operations. [Part 240 was redesignated as Part 24 and revised]

240.548 Universities, colleges of learning, and institutions of scientific research authorized to conduct wine experimental or research operations. [Part 240 was redesignated as Part 24 and revised]

240.549 Universities, colleges of learning, and institutions of scientific research authorized to conduct wine experimental or research operations. [Part 240 was redesignated as Part 24 and revised]

240.561 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.613 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.614 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.615 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.656 Proprietors of vinegar plants receiving wine free of tax for use in manufacturing vinegar. [Part 240 was redesignated as Part 24 and revised]

240.657 Proprietors of vinegar plants receiving wine free of tax for use in manufacturing vinegar. [Part 240 was redesignated as Part 24 and revised]

240.658 Proprietors of vinegar plants

procuring wine free of tax for use in the manufacture of vinegar. [Part 240 was redesignated as Part 24 and revised]

240.731 Universities, colleges of learning, and institutions of scientific research authorized to conduct wine experimental or research operations. [Part 240 was redesignated as Part 24 and revised]

240.732 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.732 Universities, colleges of learning, and institutions of scientific research authorized to conduct wine experimental or research operations. [Part 240 was redesignated as Part 24 and revised]

240.741 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.743 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.746 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.753 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.801 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.804 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.835 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.892 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.900 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.901 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.902 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.903 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.904 Proprietors of bonded wine

cellars. [Part 240 was redesignated as Part 24 and revised]

240.908 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.910 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.911 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.912 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.914 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.915 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.916 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.917 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.918 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.919 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.920 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.922 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.923 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.924 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.924 Universities, colleges of learning, and institutions of scientific research authorized to conduct wine experimental or research operations. [Part 240 was redesignated as Part 24 and revised]

240.925 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

240.1052 Proprietors of bonded wine cellars. [Part 240 was redesignated as Part 24 and revised]

250.165 Proprietors of distilled spirits plants bringing liquors into the United States from Puerto Rico. [Added]

To retain the certificate of effective tax rate computation.

Retention period: For a period of not less than 3 years after the last tax determination which the certificate is applicable.

270.183 Manufacturers of tobacco products. [Amended]

See 270.181.

270.184 Manufacturers of tobacco products. [Amended]

See 270.181.

270.187 Manufacturers of tobacco products. [Amended]

See 270.181.

270.187a Manufacturers of tobacco products removing large cigars from the factory on or after Jan. 1, 1991. [Added]

To keep such records as are necessary to establish and verify the price for which the cigars are sold in accordance with 27 CFR 270.22a. The record shall be a continuing one of each brand and size of cigar so that the sale price on which the tax is based may be readily ascertained.

270.202 Manufacturers of tobacco products. [Amended]

To keep copies of monthly reports, Form 3068, together with copies of supplemental reports covering cigars and cigarettes of Puerto Rican manufacture.

Retention period: 3 years after close of calendar year in which the reports are filed.

275.137 Persons shipping Puerto Rican cigars, cigarettes, and cigarette papers and tubes to the United States. [Amended]

To keep certified copies of notices of release, Form 3072.

Retention period: 3 years after close of calendar year in which notices are filed.

275.181 Proprietors of custom bonded manufacturing warehouse, class 6. [Amended]

See 275.153 and 270.187a.

295.51 Manufacturers of cigarette papers and tubes. [Amended]

To keep supporting records showing appropriate entries at the time of removals of cigarette papers and tubes, without payment of tax, for use of the United States.

Retention period: 3 years after close of year in which removals are made.

296.177 Persons holding pipe tobacco for sale, including those holding pipe tobacco exempt from the \$1000 floor stock tax.

To maintain inventory records of the pipe tobacco floor stocks tax liability required to be shown on the floor stocks tax return.

Retention period: As prescribed in 27 CFR 296.178.

296.178 Persons liable for floor stocks tax.

To keep a copy of the floor stocks tax return and inventory record at the place of business covered thereby. In the case of a consolidated return, or when one return is filed on behalf of a controlled group, the return shall be kept at the taxpayer's principal place of business with a copy of each inventory record supporting the tax return, and a copy of the inventory record shall also be kept at the specific place of business to which the inventory pertains.

Retention period: At least 3 years after the date of filing of the floor stocks tax return, and shall be available for inspection by ATF officers. The Regional Director (Compliance) may require an additional 3 years if retention is deemed to be necessary or desirable.

296.197 Persons (including controlled groups) liable for floor stocks tax on cigarettes held for sale on Jan. 1, 1991 and on Jan. 1, 1993. [Added]

To make and retain a list showing the address of each place of business where cigarette subject to floor stocks tax is held; names, addresses and employer identification number; and the number and tax category of cigarettes so held at each place.

296.198 Persons liable for floor stocks tax on cigarettes held for sale on Jan. 1, 1991 and on Jan. 1, 1993. [Added]

See 27 CFR 170.112.

296.199 Persons liable for floor stocks tax on cigarettes held for sale on Jan. 1, 1991 and on Jan. 1, 1993. [Added]

See 27 CFR 170.112.

LABOR DEPARTMENT

Wage and Hour Division

29 CFR

504.310 Facilities using nonimmigrant aliens as registered nurses (H-1 or H-1A). [Added]

See 20 CFR 655.310.

504.350 Facilities using nonimmigrant aliens as registered nurses (H-1 or H-1A). [Added]

See 20 CFR 655.350.

504.400 Facilities using nonimmigrant aliens as registered nurses (H-1 or H-1A). [Added]

See 20 CFR 655.350.

516.31 Employers of industrial homeworkers.

To maintain and preserve payroll or other records containing the following

information and data: (a) Date on which work is given out or begun by worker, and amount of such work given out or begun; (b) date on which work is turned in by worker, and the amount of such work; (c) kind of articles worked on and operation performed; (d) piece rates paid; (e) hours worked on each lot of work turned in; (f) wages paid for each lot of work turned in; (g) name and address of each agent, distributor, or contractor through whom homework is distributed or collected and the name and address of each homeworker or from whom it is collected by each such agent, distributor, or contractor, and (k) homeworkers handbook.

Retention period: 2 and 3 years.

517.206 Employers subject to the training wage provisions of Fair Labor Standards Amendments Act of 1989. [Added]

For second 90-day period of eligibility, to maintain the original or a copy of the training program(s), including any revisions.

Retention period: 2 years after the last day on which an individual was employed at the training wage pursuant to such training program(s).

524.10 Employers subject to Fair Labor Standards Act employing handicapped workers. [Removed, 1989]

525.13 Sheltered workshops (as defined in 29 CFR 525.2(b)). [Revised, 1989; record retention requirements now in 525.16]

525.16 Employers, referring agencies or facilities of workers employed under special minimum wage certificates.

To maintain records indicating (a) verification of the workers' disabilities; (b) evidence of the productivity of each worker with a disability gathered in a continuing basis or at periodic intervals (not to exceed six months in the case of employees paid hourly wage rates); (c) the prevailing wages paid workers not disabled for the job performed who are employed in industry in the vicinity for essentially the same type of work using similar methods and equipment as that used by each worker with disabilities employed under a special minimum wage certificate; (d) the production standards and supporting documentation for nondisabled workers for each job being performed by workers with disabilities employed under special certificates; and (e) certain records required under all of the applicable provisions of 29 CFR Part 526.

Retention period: See 29 CFR Part 516.

545.7 Employers of homeworkers in industries in Puerto Rico. [Removed]

695.6 Employers of homeworkers in industries in the Virgin Islands. [Removed]

801.30 Employers/examiners subject to the Employee Polygraph Protection Act of 1988.

(a) To retain a copy of the statement that sets forth the specific incident or activity under investigation and the basis for testing that particular employee if an employee is requested to submit to a polygraph examination in connection with an ongoing investigation involving economic loss or injury.

(b) To maintain records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.

(c) To maintain all opinions, lists, and other records relating to polygraph tests of such persons. In addition, to maintain records of the number of examinations conducted each day and, with regard to tests administered to persons identified by their employer and the duration of each test period and other such records as specified in cited section.

Retention period: 3 years.

Occupational Safety and Health Administration

29 CFR

1910.66 Building owners of all powered platform installations.

To maintain certification record which contains the date the work was performed, the signature of the person who performed the work, and an identifier for the equipment or installation which was tested or inspected. Records shall be kept readily available for review by the Assistant Secretary's representatives and by the employee.

1910.120 Employers engaged in the hazardous waste operations and emergency response operations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 USC 9601 et. seq.).

To maintain records of the medical surveillance of (a) all employees who are or may be exposed to hazardous substances or health hazards at or above the established permissible exposure limits for these substances, without regard to the use of respirators, for 30 days or more a year; (b) all employees who wear a respirator; and (c) HAZMAT employees engaged in hazardous waste operations.

Retention period: As specified in 29 CFR 1910.20.

1910.450 Employers engaged in laboratory use of hazardous chemicals. [Added]

(a) To maintain any material safety data sheets that are received with incoming shipments of hazardous chemicals, and ensure that these material safety data sheets are accessible to laboratory employees.

(b) To establish and maintain for each employee an accurate record of any measurements taken to monitor employee exposures and any medical consultation and examinations including tests or written opinions required.

Retention period: In accordance with 29 CFR 1910.20.

1910.1450, Appendix A Employers engaged in laboratory use of hazardous chemicals. [Added]

To maintain records of (a) the amounts of chemicals of moderate chronic or high acute toxicity on hand, amounts used and the names of the workers involved; (b) amounts of these substances stored and used, the dates of use, and names of users; (c) accidents; (d) chemical hygiene plan that document that the facilities and precautions were compatible with current knowledge and regulations; (e) inventory and usage records for high-risk substances and medical records in accordance with state and federal requirements.

1926.550 Employers subject to crane and derrick standards.

To maintain on file the most recent certification records which include date the crane items were inspected; the signature of the person who inspected the crane items; and a serial number or other identifier, for the crane inspected.

Retention period: Until a new certification is prepared.

1926.652 Employers subject to the excavation occupational safety and health standards.

To maintain at the jobsite one copy of the tabulated data which identifies the registered professional engineer who approved the data and at least one copy of the design.

Retention period: During the construction of the protective system and after that time the data and design may be stored off the jobsite, but a copy shall be made available to the Secretary upon request.

1926.800 Employers subject to underground construction standards.

(a) To maintain record of all air quality tests above ground at the workshop and make available these

records to the Secretary upon request. The records shall include the location, date, time, substance and amount monitored.

Retention period: Until completion of the project.

(b) To maintain records of exposures to toxic substances in accordance with 29 CFR 1910.20.

PENSION BENEFIT GUARANTY CORPORATION

29 CFR

2610.11 Pension plan administrators (with respect to plan years beginning on or after Jan. 1, 1988).

To retain certain documentation (all plan records including calculations and other data prepared by an enrolled actuary or, for a plan described in section 412(i) of the Code, by the insurer from which the insurance contracts are purchased) needed to support or to validate premium payments. Records must include but not limited to records that establish the number of plan participants, that reconcile the calculation of the plan's unfunded vested benefits with the actuarial valuation upon which the calculation was based, and for plans that assert entitlement to the reduction in the cap on the variable rate portion of the premium that demonstrate the methods and assumptions used by the plan during the base period with respect to calculating its maximum deductible contribution pursuant to section 404 of the Code.

Retention period: For a period of 6 years after the premium due date.

LABOR DEPARTMENT

Mine Safety and Health Administration

30 CFR

25.10 Applicants authorize to use multiple-shot blasting units in coal mines. [Removed, 1989; effective Jan. 22, 1991]

INTERIOR DEPARTMENT

Minerals Management Service

30 CFR

206.253 Lessees of Federal coal leases and Indian (Tribal and allotted) coal leases (except leases on the Osage Indian Reservation, Osage Co., Okla.).

To maintain accurate records to determine to which individual Federal or Indian lease coal in the waste pit or slurry pond should be allocated.

Retention period: Not specified.

212.200 Lessees, operators, revenue payors, or other persons holding offshore and onshore Federal and Indian oil and gas leases.

See 212.51.

250.20 Lessees exploring, developing, producing, and transporting oil, gas, and sulphur in the Outer Continental Shelf. [Added]

To maintain records of inspection, testing, maintenance, and crane operator qualifications in accordance with the provisions of API RP 2D at the field office nearest the OCS facility.

Retention period: 2 years.

250.182 Lessees exploring, developing, producing, and transporting oil, gas, and sulphur in the Outer Continental Shelf.

To maintain well test data.

Retention period: 2 years.

282.29 Lessees performing operations in the Outer Continental Shelf for minerals, other than oil, gas, and sulphur.

(a) To maintain records that include logs of all strata penetrated and conditions encountered, such as minerals, water, gas, or unusual conditions, and copies of analysis of all samples analyzed.

(b) To maintain records in which will be kept an accurate account of all ore and rock mined; all mineral products sold, transferred, used, or otherwise disposed of and to whom sold or transferred, and the inventory weight, assay value, moisture content, base sales price, dates, penalties, and price received.

TREASURY DEPARTMENT

Monetary Offices

31 CFR

103.29 Financial Institutions; Bank Secrecy Act. [Added]

To maintain a chronological log for each calendar month for each issuance or sale of one or more bank check or draft, cashier's check, money order or traveler's check for \$3,000 or more in currency.

Retention period: 5 years.

103.33 All financial institutions.

To maintain either the original or a copy of records of (a) extensions of credit exceeding \$10,000, except those secured by real property; and (b) advice, request, or instruction, received or given to another financial institution or person, regarding a transaction resulting in the transfer of more than \$10,000 to a person, account, or place outside the United States.

Retention period: 5 years.

103.36 Casinos subject to the Bank Secrecy Act.

To maintain a record of social security number of the person involved when funds are deposited; account is opened or credit is extended; and other such records as specified in section cited.

Retention period: 5 years.

103.38 All financial institutions.

To keep records as specified in 31 CFR Part 103.

Retention period: 5 years.

129.3 Persons subject to the portfolio investment survey regulations.

To maintain all information required by the International Investment and Trade in Services Survey Act (22 USC 3104(b)(1)).

Retention period: 3 years from the date of submission of any reports or other information required pursuant to the Act, or for such shorter period as may be specified in the reporting form and/or accompanying instructions.

Office of Foreign Assets Control**31 CFR****570.601 Persons engaged in transactions subject to the Kuwait Assets Control regulations. [Added]**

To keep full and accurate records of each such transactions in which that person engages, regardless whether such transaction is effected pursuant to license or otherwise.

Retention period: 2 years after the date of such transaction.

TRANSPORTATION DEPARTMENT**Coast Guard****33 CFR****154.740 Operators of oil transfer facilities. [Amended]**

To maintain (a) letter of intent, name of person in charge of transfer, operations, equipment, tests and inspections, hose, information, facility inspection record; (b) signed copy of each declaration of inspection for facility; (c) records of all repairs made within the last three years involving any component of the facility's vapor control system; (d) records of all automatic shut downs of the facility's vapor control system within the last 3 years; and (e) plans, calculations, and specifications of the facility's vapor control system certified under 33 CFR 154.804.

Retention period: (a) Not specified; (b) 1 month from date of signature; (c)-(e) 3 years.

154.804 Operators of oil transfer facilities. [Added]

To maintain at the facility, any certifications issued, copies of plans, calculations, and specifications for the vapor control system.

EDUCATION DEPARTMENT**34 CFR****86.103 Institutions of higher education (IHE's); drug prevention program. [Added]**

To maintain, at a minimum, a copy of materials distributed and any additional materials on its drug prevention program made available to students and employees; records indicating that these materials were distributed to each of the IHE's students and employees; and the results of the IHE's annual evaluation of its drug prevention program.

Retention period: 3 years after the first fiscal year in which the records were created, or until litigation, claim, negotiation, audit or other actions involving the records have been resolved.

86.204 State and local educational agencies; drug prevention program. [Added]

To maintain records on the (a) elements of its drug prevention program, including the results of its biennial review; (b) personal records, documents; and (c) any other information related to compliance with the certification.

Retention period: 3 years after the fiscal year in which the records were created or until litigation, claim, negotiation, audit, or other actions involving the records have been resolved.

200.43 State educational agencies and other agencies receiving funds to meet the special educational needs of educationally deprived children (Part A, Chapter 1).

To maintain annual records documenting compliance with the comparability of services requirements.

200.71 State educational agencies and other agencies receiving funds to meet the special educational needs of educationally deprived children (Part A, Chapter 1).

To maintain contemporaneous time distribution records reflecting the actual amount of time the employee spends on the program.

204.10 State educational agencies and other agencies receiving funds under Chapter 1 of the Education Consolidation and Improvement Act of 1981.

(a) To maintain records of the amount and disposition of all Chapter 1 funds, including records that show the share of the cost provided from non-Chapter 1 sources.

(b) To maintain other records that are needed to facilitate an effective audit of Chapter 1 project and that show compliance with Chapter 1 requirements; and

(c) To maintain evaluation data collected under Chapter 1.

Retention period: 5 years, or until all audit findings have been resolved.

VETERANS AFFAIRS DEPARTMENT**38 CFR****17.51 Privately or publicly-owned community residential care facilities.**

To maintain records on each resident in a secure place. Such records must include (a) a copy of all signed agreements with the resident; (b) emergency notification procedures; and (c) a copy of the statement of needed care.

Retention period: Not specified.

36.4215 Holders of loans for manufactured homes and/or lots. [Amended]

(a) To keep records of payments received, disbursements chargeable thereto, and dates thereof.

Retention period: Until Administrator ceases to be liable for loan.

(b) To retain copies of all loan origination records on VA guaranteed loan. (Loan origination records include the loan application, including any preliminary applications, verifications of employment and deposit, all credit reports, including preliminary credit reports, copies of each sales contract and addendums, letters of explanations for adverse credit items, discrepancies and the like, direct references from creditors, correspondence with employers, appraisal reports, reports on other inspections of property, and all closing papers and documents).

Retention period: For at least one year from the date of loan closing.

36.4330 Holders of loans guaranteed or insured by the Veterans Administration under chapter 37, title 38, U.S. Code. [Amended]

To keep a record of each loan showing the amounts of payments received on the obligation and disbursements chargeable thereto, and the dates thereof.

Retention period: Until the Administrator ceases to be liable as guarantor or insurer of the loan.

ENVIRONMENTAL PROTECTION AGENCY**40 CFR****31.20 State and local governments receiving Federal grants and cooperative agreements. [Added]**

To maintain accounting records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

Retention period: See 7 CFR 3016.2.

35.6250 Recipients of CERCLA-funded cooperative agreements and Superfund State Contracts.

(a) To maintain a recordkeeping system that consists of complete site-specific files containing documentation of costs incurred.

(b) To maintain records to comply with the requirements of 40 CFR 35.6700, 35.6705, and 35.6710 and requirements of source documentation described in 40 CFR 31.20(b)(6).

Retention period: 10 years following submission of the final Financial Status Report for the site, or until resolution of all issues arising from litigation, claim, negotiation, audit, cost recovery, or other actions, whichever is later. Written approval must be obtained from the EPA award official before destroying any records.

35.6270 Recipients of CERCLA-funded cooperative agreements and Superfund State Contracts. [Added]

To maintain a recordkeeping system that enables site specific costs to be tracked by site, activity, and operable unit, as applicable, and provides sufficient documentation for cost recovery purposes. In addition, to comply with the requirements regarding records described in 40 CFR 31.20, 35.6700, 35.6705, and 35.6710.

35.6335 Recipients of CERCLA-funded cooperative agreements and Superfund State Contracts. [Added]

To maintain property records for CERCLA-funded property which include the contents specified in 40 CFR 35.6700.

35.6700 Recipients of CERCLA-funded cooperative agreements and Superfund State Contracts. [Revised]

To maintain an administrative record consistent with section 113 of CERCLA, the National Contingency Plan, and relevant EPA policy and guidance. In addition:

(a) To maintain project records by site, activity, and operable unit, as applicable.

(b) To maintain property, financial and procurement records.

(c) To maintain time and attendance records and supporting documentation; documentation of compliance with statutes and regulations that apply to the project; and the number of site-specific technical hours spent to complete each pre-remedial product.

Retention period: 10 years following submission of the final Financial Status Report for the site, or until resolution of all issues arising from litigation, claim, negotiation, audit, cost recovery or other actions, whichever is later. Written approval must be obtained from the EPA award official before destroying any records.

35.6705 Recipients of CERCLA-funded cooperative agreements and Superfund State Contracts. [Revised]

To maintain all financial and programmatic records, supporting documents, statistical records, and other records which are required by 40 CFR 35.6700, program regulations, or the cooperative agreement, or are otherwise reasonably considered as pertinent to program regulations or the cooperative agreement.

Retention period: 10 years following submission of the final Financial Status Report for the site, or until resolution of all issues arising from litigation, claim, negotiation, audit, cost recovery, or other actions, whichever is later. Written approval must be obtained from EPA award official before destroying any records.

35.6710 Recipients of CERCLA-funded cooperative agreements and Superfund State Contracts. [Added]

To maintain records as required by 40 CFR 35.6705. To also comply with records access requirements described in 40 CFR 31.36 (i)(10) and 31.42(e).

51.19 Owners and operators of stationary sources emitting air pollutants for which a national standard is in effect. [Removed]**51.214 Owners or operators of each source subject to continuous emission monitoring and recording requirements. [Added]**

To maintain a file of all pertinent information (emission measurements, continuous monitoring system, performance testing measurements, performance evaluations, calibration checks, and adjustments and maintenance performed on such monitoring systems) and other reports as required by 40 CFR Part 51, Appendix P.

Retention period: 2 years following the date of collection of information.

Part 51, Appendix P Owners or operators of affected facilities subject to continuous emission monitoring and recording requirements. [Added]

To maintain a file of all information reported in the quarterly summaries, and all other data collected either by the continuous monitoring system or as necessary to convert monitoring data to the units applicable standard.

Retention period: For a minimum of two years from the date of collection of such data or submission of such summaries.

52.741 Affected facilities; control strategy ozone control measures in certain counties in Illinois. [Added]

To maintain a copy of the results of the appropriate test methods and capture efficiency protocols.

Retention period: 3 years.

52.741 Owners or operators of coating operations. [Added]

To maintain each day at the facility the following records on:

(a) The name and identification number of each coating as applied on each coating line;

(b) The weight of VOM per volume of each coating (minus water and any compounds which are specifically exempted from the definition of VOM) as applied each day on each coating line; and

(c) All records necessary to calculate the daily-weighted average VOM content from the coating line in accordance with the proposal submitted and other such information as specified in cited section.

Retention period: 3 years.

52.741 Owners or operators of subject flexographic, packaging rotogravure or publication rotogravure printing lines. [Added]

To maintain each day for each coating line the following records on:

(a) The name and identification number of each coating and ink as applied on each printing line;

(b) The VOM content of each coating and ink as applied each day on each printing line;

(c) Any record showing violation of 40 CFR 52.741(h)(1)(i);

(d) Control device monitoring data;

(e) A log of operating time for the capture system, control device, monitoring equipment, and the associated printing line; and

(f) A maintenance log for the capture system, control device, and monitoring equipment detailing all routine and

nonroutine maintenance performed including dates and duration of any outages.

Retention period: 3 years.

52.741 Owners or operators of pharmaceutical manufacturing facilities. [Added]

To maintain the following records on:

- (a) Air pollution control parameters;
- (b) Vapor pressure of VOM being controlled;
- (c) For any leak which cannot be readily repaired within one hour after detection: (1) The name of the leaking equipment; (2) the date and time the leak is detected; (3) the action taken to repair the leak; and (4) the data and time the leak is repaired;
- (d) Maintenance and inspection records for emission sources; and other such information as specified in cited section.

Retention period: 2 years.

52.741 Owners or operators of paint or ink manufacturing plants. [Added]

- (a) To keep at the plant records of leak when detected. Such records shall contain the date of detection and repair.

Retention period: 2 years from the date of each detection or each repair attempt.

- (b) To maintain at the facility records necessary to demonstrate compliance with emission source requirements.

Retention period: 3 years.

- (c) To maintain records which include (but are not limited to) the percent of water (by weight) in the paint or ink being produced and the quantity of Mangle oil, glycol, and other solvents in the ink being produced.

Retention period: 3 years.

52.741 Owners or operators of non-CTG sources-exempt emission sources. [Added]

To maintain the following information at the facility:

- (a) Control devices monitoring data;
- (b) A log of operating time for the capture system, control device, monitoring equipment and the associated emission source; and
- (c) A maintenance log for the capture system, control device and monitoring equipment detailing all routine and non-routine maintenance performed including dates and duration of any outages.

Retention period: 3 years.

60.48c Owners or operators of affected facilities subject to the sulfur dioxide emission limits, fuel oil sulfur limits, or percent reduction requirements. [Added]

To keep records, as applicable, on control devices; excess emission; results of emission tests, fuel sampling and

analysis results; date of construction or reconstruction; anticipated startup and actual startup; and fuel supplier certification; amounts of each fuel combusted during each day; and other such information as specified in cited section.

Retention period: 2 years following date of such records.

60.49b Owners or operators of industrial-commercial-institutional steam generating facilities.

- (a) If monitoring of steam generating unit operating condition plan is approved, to maintain records of predicted nitrogen oxide emission rates and the monitored operating conditions, including steam generating unit load, identified in the plan.
- (b) To maintain records of the amounts of all fuels fired during each day and calculate the annual capacity factor individually for coal, distillate oil, residual oil, natural gas, wood, and municipal-type solid waste for each calendar year.
- (c) To maintain records of the nitrogen content of the oil residual combusted in the affected facility and calculate the average fuel nitrogen content on a per calendar quarter basis.
- (d) To maintain records of opacity for facilities subject to the opacity standard under 40 CFR 60.43b.
- (e) To maintain records on the calendar date, the average hourly nitrogen oxides emission rates measured or predicted and other information as specified in section cited for each steam generating unit operating day for facilities subject to nitrogen oxide standards under 40 CFR 60.44(b).

Retention period: 2 years following date of record.

- (f) To maintain records of the following information for each steam generating unit operating day: (1) Calendar date; (2) the number of hours of operation; and (3) a record of the hourly steam load.

Retention period: 2 years following date of record.

60.545 Owners or operators of tread end cementing operation and green tire spraying operation using water-based cements or sprays containing less than 1.0 percent by weight of VOC.

To maintain records of formulation data or the results of Method 24 analysis conducted to verify the VOC contents of the spray.

Retention period: Not specified.

60.565 Owners or operators of polypropylene, polyethylene, polystyrene, and poly-(ethylene terephthalate) manufacturing plants. [Added]

To maintain up-to-date, readily accessible records of the performance

tests and other such information as specified in cited section.

Retention period: 2 years.

60.615 Owners or operators of new, modified, and reconstruction air oxidation facilities. [Added]

To keep up-to-date, readily accessible continuous records of (a) the equipment operating parameters specified to be monitored under 40 CFR 60.613(a) and (c) as well as up-to-date, readily accessible records of periods of operation during which the parameter boundaries established during the most recent performance data are exceeded; (b) the flow indication specified under 40 CFR 60.613(a)(2), 60.613(b)(2), and 60.613(c)(1), and (c) records of all periods when the vent stream is diverted from the control device or has no flow rate; and other such records as specified in cited section.

60.665 Owners or operators of new, modified, and reconstituted distillation facilities. [Added]

See 40 CFR 60.615.

60.744 Owners or operators of new, modified and reconstructed facilities that perform polymeric coating of supporting substrates.

To maintain records of the measurements and calculations required in 40 CFR 60.743 and 60.744.

Retention period: For at least 2 years following the date of the measurements and calculations.

60.747 Owners or operators of new, modified and reconstructed facilities that perform polymeric coating of supporting substrates.

To maintain records documenting compliance by the methods described in 40 CFR 60.743(a)(1), (a)(2), (a)(4), (b), or (c).

Retention period: At least 2 years.

61.25 Owners or operators of underground uranium mines.

To maintain records documenting the source of input parameters including the results of all measurements upon which they are based, the calculations and/or analytical methods used to derive values for input parameters, and the procedure used to determine compliance. In addition, the documentation should be sufficient to allow an independent auditor to verify the accuracy of the determination made concerning the facility's compliance with the standard.

Retention period: 5 years. Records must be made available for inspection by the Administrator or his authorized representative.

61.26 Owners or operators of underground uranium mines. [Revised, 1989; record retention requirements now in 61.25]

61.123 Owners and operators of calciners and nodulizing kilns at elemental phosphorous plants. [Revised, 1989; record retention requirements now in 61.124]

61.124 Owners or operators of calciners and nodulizing kilns at elemental phosphorous plants.

See 40 CFR 61.25.

61.138 Owners or operators of coke by-product recovery plants.

(a) To maintain records pertaining to the design of control equipment installed to comply with 40 CFR 61.132 through 61.134.

(b) To maintain records pertaining to sources subject to 40 CFR 61.132 and 61.133. Such records shall contain the date of the inspection and the name of the inspector; a brief description of each visible defect in the source or control equipment and the method and date of repair of the defect; the date of attempted and actual repair and method of repair of the leak; and a brief description of any system abnormalities found during the annual maintenance inspection, the annual maintenance inspection, the repairs made, the date of attempted repair, and the date of actual repair.

Retention period: 2 years following each semiannual (and other) inspection and each annual maintenance inspection.

61.142 Owners or operators of asbestos mills. [Added]

To maintain records of the results of visible emission monitoring and air cleaning device inspections.

Retention period: 2 years.

61.144 Manufacturers of operations using commercial asbestos. [Added]

See 40 CFR 61.142.

61.145 Owners or operators of asbestos demolition and renovation operations. [Added]

To keep daily temperature records during periods when wetting operations are suspended due to freezing temperature. The owner or operator must record the temperature in the area containing the facility components at the beginning, middle, and end of each workday.

Retention period: 2 years.

61.147 Owners or operators of demolition and renovation operations—asbestos emission control. [Added]

See 40 CFR 61.142.

61.149 Owners or operators of asbestos mills. [Added]

(a) To keep records temperatures recorded at hourly intervals, during periods when wetting operations are suspended.

Retention period: At least 2 years in a form suitable for inspection.

(b) To retain a copy of all waste shipment records, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site.

Retention period: 2 years.

61.150 Owners or operators of asbestos waste disposal manufacturing, fabricating, demolition, renovation, and spraying operations. [Added]

See 40 CFR 61.149.

61.154 Owners or operators of active waste disposal sites receiving asbestos-containing waste material. [Added]

(a) To maintain waste shipment records.

Retention period: 2 years.

(b) To maintain records of the location, depth and area, and quantity in cubic meters (cubic yards) of asbestos-containing waste material within the disposal site on a map or diagram of the disposal area.

Retention period: Until closure.

61.155 Owners or operators of operations that convert regulated asbestos-containing material (RACM) and asbestos-containing waste material into nonasbestos (asbestos-free) material. [Added]

To maintain on-site records of (a) the results of start-up performance testing and all subsequent performance testing, including operating parameters, feed characteristic, and analyses of output materials; (b) results of the composite analyses required during the initial 90 days of operation; (c) results of the monthly composite analyses; (d) results of continuous monitoring and logs of process operating parameters; (e) the information on waste shipments received; and (f) for output materials where no analyses were performed to determine the presence of asbestos, records of the name and location of the purchaser or disposal site to which the output materials were sold or deposited, and the date of sale or disposal.

Retention period: 2 years.

61.204 Owners and operators of the phosphogypsum that is produced as a result of phosphorus fertilizer production and all that is contained in existing phosphogypsum stacks.

See 40 CFR 61.25.

61.224 Owners and operators of all sites that are used for the disposal of uranium mill tailings.

See 40 CFR 61.25.

61.246 Owners or operators of sources intended to operate in volatile hazardous air pollutant (VHAP) service.

(a) To keep records in a log of each leak as specified in 40 CFR 61.242-2, 61.242-3, 61.242-7.

Retention period: 2 years.

(b) To maintain records, in a log, pertaining to all equipment subject to the requirements in 40 CFR 61.242-1 to 40 CFR 61.242-11 and all other records as specified in cited section.

61.255 Owners or operators of facilities byproduct materials during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings.

See 40 CFR 61.25

61.276 Owners or operators with a storage vessel subject to the national emission standard for benzene emissions.

(a) To keep readily accessible records showing the dimensions of the storage vessel and an analysis showing the capacity of the storage vessel.

Retention period: As long as the storage vessel is in operation.

(b) To keep records pertaining to closed vent system and control devices in a readily accessible location.

Retention period: 2 years.

61.305 Owners or operators of affected facilities subject to the standards for benzene waste operations and benzene transfer operations. [Added]

To maintain an up-to-date readily accessible records of data measured during the performance test, equipment operating parameters, and flare pilot flame monitoring.

Retention period: 2 years from the date the information is recorded.

61.356 Owners or operators of facilities subject to the standards for benzene waste operations. [Added]

(a) To maintain records that identify each waste stream (records shall include all test results, measurements, calculations, and other necessary documentation).

(b) To maintain documentation for each waste shipment that includes the date waste is shipped offsite, quantity of waste shipped offsite, name and address of the facility receiving the waste, and a copy of the notice sent with the waste shipment.

(c) To maintain engineering design documentation for all control equipment that is installed on the waste

management unit, and other such information as specified in cited section.

Retention period: (a) and (b) 2 years from the date the information is recorded unless otherwise specified. (c) For the life of the control equipment.

80.27 Distributors, resellers, carriers, retailers, and wholesale purchaser-consumers of gasoline and alcohol blends volatility.

To maintain each invoice, loading ticket, bill lading, delivery ticket and other documents which accompany the shipment of such gasoline. Such documents shall be available for inspection by the Administrator or authorized representative during such period.

Retention period: 1 year.

82.13 Importers of certain chlorofluorocarbons (CFC's) and brominated compounds (halons) to reduce the risk of stratospheric ozone depletion.

To maintain records on (a) the quantity of each controlled substances imported, either alone or in mixtures; (b) the quantity of each controlled substances were imported; (c) the port of entry through which the controlled substances passed; (d) the country from which the imported controlled substances were imported; the port of exit; and other information as specified in cited section.

Retention period: 3 years.

82.13 Importers of certain chlorofluorocarbons (CFC's) and brominated compounds (halons) to reduce the risk of stratospheric ozone depletion.

To maintain (a) dated records of the quantity of each of the controlled substances produced at each facility; (b) dated records of the quantity of controlled substances used as a feedstocks in the manufacture of controlled and non-controlled substances introduced into the production process of new controlled substances at each facility; (c) dated records of the quantity of HCFC-22 and CFC-116 produced with each facility also producing controlled substances; and (d) other records as specified in cited section.

82.13 Persons requesting additional production allowances in addition to baseline production allowances or producers who purchase controlled substances used or consumed as feedstock for other substances (chlorofluorocarbons and halons). [Added]

To maintain (a) dated records of the quantity and calculated level of controlled substance used and entirely consumed in the manufacture of another chemical; (b) copies of the invoices or receipts documenting the

sale from the producer or importer of the controlled substance to the person; (c) dated records of the names, commercial use and quantities of the resulting chemical(s); and (d) dated records of shipments to purchasers of the resulting chemicals.

Retention period: 3 years.

86.090-7 Manufacturers of new motor vehicles (or new motor vehicle engines) subject to the emission standards or procedures. [Added]

To maintain general and individual records consisting of:

(a) Identification and description and certification vehicles (or certification engines) for which testing is required;

(b) A description of all emission control systems which are installed on or incorporated in each certification vehicle (or certification engine);

(c) A description of all procedures used to test each certification vehicle (or certification engine);

Note: A properly filed application for certification following the format prescribed by the EPA for the appropriate model year may be considered records.

(d) A brief history of each motor vehicle (or motor vehicle engine) used for certification;

(e) All emission tests performed (except tests performed by EPA directly), including tests results, the date and purpose of each test, and the number of miles accumulated on the vehicle or the number of hours accumulated on the engine;

(f) The date of each mileage (or service) accumulation run, listing the mileage (or the number of operating hours) accumulated.

Retention period: 6 years after issuance of all certificates of conformity. Routine emission test records—1 year after issuance of all certificates.

86.090-7 Manufacturers (or contractors for the manufacturers, if applicable) of new vehicles or engines certified under any of the averaging or banking programs. [Added]

To maintain adequately organized and indexed records containing the following:

(a) EPA engine family;

(b) Vehicle (or engine) model year and build date;

(c) Vehicle (or engine) identification number;

(d) BHP rating (heavy duty only);

(e) Purchaser and destination;

(f) Assembly plant; and other such information as specified in cited section.

Retention period: 6 years from the due date for the end-of-model year report.

86.091-7 Manufacturers of new motor vehicles (or new motor vehicle engines) subject to the emission standards or procedures. [Added]

See 40 CFR 86.090-7.

86.091-15 Manufacturers of heavy-duty engines eligible for the nitrogen and particulate averaging, trading, and banking programs. [Added]

To maintain the quarterly records required by 40 CFR 86.091-7(c)(8).

86.107-90 Manufacturers of petroleum-fueled and methanol-fuel light-duty vehicles and light-duty trucks.

(a) To maintain permanent records of results at the initiation and termination of each diurnal or hot soak in measuring hydrocarbon (hydrocarbons plus methanol as appropriate).

(b) For the methanol sample to maintain permanent records of the following: (1) The volumes of deionized water introduced into each impinger; (2) the rate and time of sample collection; (3) the volumes of each sample introduced into the gas chromatograph; (4) the flow rate of carrier gas through the carrier; and (5) the chromatogram of the analyzed sample.

86.142-90 Manufacturers of 1977 and later motor year new light-duty vehicles and new light-duty trucks subject to emission test procedures.

To maintain for each test: (a) Test number; (b) system or device tested (brief description); (c) date and time of day for each part of the test schedules; (d) instrument operated; (e) driver or operator; (f) vehicle ID number, manufacturer, model year, standard, engine family, evaporative emissions family, basic engine description; and such other information as cited in section.

86.605 Manufacturers of new gasoline-fueled and diesel light-duty vehicles and new gasoline-fueled and diesel light-duty trucks subject to selective enforcement auditing procedures required by air pollution control regulations.

To maintain general and individual records relating to vehicle emission tests performed pursuant to test orders as specified in the section cited.

Retention period: 1 year after completion of tests.

86.608-88 Manufacturers of new gasoline-fueled and diesel light-duty vehicles and new gasoline-fueled and diesel light-duty trucks subject to selective enforcement auditing procedures required by air pollution control regulations.

To maintain equivalency documentation if using an equivalent method when measuring the temperature of the test fuel at other than

the approximate mid-volume of the fuel tank and when draining the test fuel from other than the lowest point of the tank.

Retention period: 1 year after completion of all testing in response to a test order.

86.1005-88 Manufacturers of new gasoline-fueled and diesel heavy-duty vehicles and new gasoline-fueled and diesel heavy-duty trucks subject to selective enforcement auditing procedures required by air pollution control regulations.

To maintain general and individual records relating to vehicle emission tests performed pursuant to test orders as specified in the section cited.

Retention period: 1 year after completion of tests.

86.1005-90 Manufacturers of new petroleum-fueled or methanol-fueled heavy duty or engine or light-duty trucks.

To maintain testing and auditing records as specified in section cited.

Retention period: 1 year after completion of all testing in response to a test order.

86.1008-88 Manufacturers of new gasoline-fueled and diesel heavy-duty vehicles and new gasoline-fueled and diesel heavy-duty trucks subject to selective enforcement auditing procedures required by air pollution control regulations.

See 40 CFR 86.608-88.

86.1008-90 Manufacturers of new petroleum-fueled or methanol-fueled heavy-duty engines or light-duty trucks.

To maintain and make available to the EPA Administrator upon request, equivalency test documentation.

86.1242-90 Manufacturers of new gasoline-fueled and methanol-fueled heavy duty vehicles.

See 40 CFR 86.142-90.

122.21 Persons holding or applying for permits to discharge wastes pursuant to the national pollutant discharge elimination program.

To maintain records of all information resulting from monitoring activities and relating to all sludge-related application data and other such information as indicated in section cited.

Retention period: 5 years (or longer as required by 40 CFR Part 403), except for records of monitoring information—3 years.

142.14 State agencies having primary enforcement responsibilities over public water.

To maintain records of tests, measurement, analyses, decisions, and determinations performed on each

public water system to determine compliance with applicable provisions of State primary drinking water regulations.

Retention period: (a) Records of turbidity measurements—for less than 1 year; (b) records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness and applicable reporting requirements—not less than 1 year; (c) records of decisions—40 years or until 1 year after the decision is reversed or revised; (d) records of any determination that a public water system supplied by a surface water source or a ground water source under the direct influence of surface water is not required to provide filtration treatment—40 years or until withdrawn; (e) records of analyses for contaminants other than microbiological contaminants (including total coliform, fecal coliform, and heterotrophic plate concentration, other parameters necessary to determine disinfection effectiveness (including temperature and pH measurements) and turbidity—40 years; (f) records of microbiological analyses of repeat or special samples—1 year in the form of actual laboratory reports or in an appropriate summary form; and (g) records of decisions made pursuant to the total coliform provisions of 40 CFR Part 141—5 years.

160.29 Testing facilities conducting studies that support applications for research or marketing permits for pesticides regulated by EPA.

To maintain a current summary of training and experience and job description for each individual engaged in or supervising the conduct of a study.

Retention period: 5 years.

160.63 Testing facilities conducting studies that support applications for research or marketing permits for pesticides regulated by EPA.

To maintain written records of all inspection, maintenance, testing, calibrating, and/or standardizing operations. Also to maintain written records of nonroutine repairs performed on equipment as a result of failure and malfunction.

Retention period: 2 years.

160.81 Testing facilities conducting studies that support applications for research or marketing permits for pesticides regulated by EPA.

To maintain historical file of standard operating procedures and all revisions thereof, including the dates of such revisions.

Retention period: In accordance with 40 CFR 160.195.

160.120 Testing facilities conducting studies that support applications for a research or marketing permits for pesticides regulated by EPA.

To maintain with the protocol records of all changes in or revisions of an approved protocol and the reasons therefore.

Retention period: In accordance with 40 CFR 160.195.

160.195 Testing facilities conducting studies that support applications for research or marketing permits for pesticides regulated by EPA.

(a) To maintain documentation records, raw data, and specimens pertaining to a study and required to be retained.

Retention period: (1) In the case of a study used to support an application for a research or marketing permit approved by EPA, the period during which the sponsor holds any research or marketing permit to which the study is pertinent. (2) A period of at least 5 years following the date on which the results of the study are submitted to the EPA in support of an application for research marketing year. (3) In other situations (e.g. where the study does not result in the submission of the study in support of an application for a research or marketing permit), a period of at least 2 years following the date on which the study is completed, terminated, or discontinued.

(b) Wet specimens, samples of test, control, or reference substances, and specially prepared material which are relatively fragile and differ markedly in stability and quality during storage shall be retained only as long as the quality of the preparation affords evaluation.

(c) To maintain the master schedule sheet, copies of protocols and records of quality assurance inspections in accordance with 40 CFR 160.195(b).

(d) To maintain summaries of training and experience and job description in accordance with 40 CFR 160.195(b).

259.54 Generators of medical waste, including generators of less than 50 pounds per month. [Amended]

(a) To keep a copy of each tracking form signed in accordance with 40 CFR 259.52

Retention period: For at least 3 years from the date the waste was accepted by the initial transporter.

(b) To retain a copy of all exception reports required to be submitted under 40 CFR 259.55(c).

Retention period: 3 years from when the exception report was submitted.

(c) To maintain a shipment log at the original generation point.

Retention period: For a period of 3 years from the date the waste was shipped.

(d) To maintain a shipment log at each central collection point and other such records as specified in cited section.

Retention period: For a period of 3 years from the date that regulated medical waste was accepted from each original generation point.

259.55 Generators of medical waste including generators of less than 50 pounds per month. [Added]

To maintain a copy of the exception report.

Retention period: For a period of 3 years from the due date of the report.

259.61 Generators of regulated medical waste who incinerate regulated medical waste on-site. [Added]

(a) To keep an operating log at the incineration facility.

Retention period: From June 22, 1989 to June 22, 1991.

(b) To maintain the following information for each shipment of regulated medical waste accepted:

- (1) The date the waste was accepted;
- (2) The name and State permit or identification number of the generator who originated the shipment. If the State does not issue permit or identification numbers, then the generators' address;
- (3) The total weight of the regulated medical waste accepted from the originating generator; and
- (4) The signature of the individual accepting the waste.

Retention period: Until at least June 22, 1992.

(c) To keep copies of all tracking forms if subject to the tracking form requirements.

Retention period: 3 years from the date the waste was accepted.

(d) To retain a copy of the on-site incinerator report form.

Retention period: For 3 years from the date of submission.

259.76 Transporters of medical waste.

To retain a copy of each tracking form in accordance with 40 CFR 259.77.

259.77 Transporters of regulated medical waste. [Amended]

(a) To keep a copy of the tracking form signed by the generator, the previous transporter (if applicable), and the next party, which may be one of the following: Another transporter or the owner or operator of an intermediate handling facility, or destination facility.

Retention period: For a period of 3 years from the date the waste was accepted by the next party.

(b) For regulated medical waste that is not accompanied by a generator—

initiated tracking form, to retain a copy of all transporter-initiated tracking forms and consolidation logs.

Retention period: For a period of 3 years from the date the waste was accepted by the transporter.

(c) For any regulated medical waste that was received by the transporter accompanied by a tracking form and consolidated by a tracking form and consolidated or remanifested by the transporter to another tracking form, to retain (1) a copy of the generator-initiated tracking form signed by the transporter; (2) a copy of the transporter-initiated tracking form signed by the intermediate handler or destination facility and all associated consolidation logs.

Retention period: (1) 3 years from the date the waste was accepted by the transporter; and (2) 3 years from the date the waste was accepted by the intermediate handler or destination facility.

(d) To retain a copy of each transporter report required by 40 CFR 259.78.

Retention period: 3 years after the date of submission.

259.81 Owners or operators of facilities including destination and intermediate facilities receiving regulated medical waste generated in a Covered State. [Amended]

(a) To retain a copy of each tracking form in accordance with 40 CFR 259.83

(b) To retain a copy of the tracking form or shipping papers if signed in lieu of the tracking form.

Retention period: For at least 3 years from the date of acceptance of the regulated medical waste.

259.83 Owners or operators of destination facilities or intermediate handlers receiving regulated medical waste generated in a Covered State. [Amended]

(a) To maintain (1) copies of all tracking forms and logs; (2) the name and State permit or identification number of each generator who delivered waste to the destination facility or intermediate handler, if the State does not issue permit or identification numbers then the generator's address; and (3) copies of all discrepancy reports.

(b) To maintain the following information for each shipment of regulated medical waste accepted: (1) The date the waste was accepted; (2) the name and State permit or identification number of the generator who originated shipment. If the State does not issue permit or identification numbers, then the generator's address; (3) the total weight of the regulated medical waste accepted from the originating generator; and (4) the signature of the individual accepting the waste.

Retention period: 3 years from the date the waste was accepted.

259.91 Persons engaged in rail transportation of regulated medical waste generated in a Covered State.

To retain a copy of the tracking forms and rail shipping papers in accordance with 40 CFR 259.77.

261.31 Hazardous waste generators and treatment, storage, and disposal facilities. [Added]

To maintain in operating or other onsite records, documents and data sufficient to prove that the unit is an aggressive biological treatment unit and the sludges sought to be exempted from the definition of F037 and/or F038 were actually treated in the aggressive biological treatment unit.

261.35 Hazardous waste generators. [Added]

To maintain the following records documenting the cleaning and replacement as part of the facilities operating records:

(a) The name and address of the facility;

(b) Formulations previously used and date on which their use ceased in each process at the plant;

(c) Formulations currently used in each process at the plant;

(d) The name and address of any persons who conducted the cleaning and replacement;

(e) The dates on which cleaning and replacement were accomplished;

(f) The dates of sampling and testing; and other information as specified in section cited.

262.34 Hazardous waste generators. [Added]

To maintain records on:

(a) A description of procedures that will be followed to ensure that all wastes are removed from the drip pad and associated collection system at least once every 90 days; and

(b) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal.

264.73 Owners and operators of on-site and off-site hazardous waste treatment, storage, and disposal facilities. [Added]

To keep a written operating record of the facility.

Retention period: Until at least closure of the facility; monitoring data at disposal facilities: Throughout the post-closure period; records for inspections: 3 years.

264.571 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

To keep on file at the facility a written assessment of the drip pad, reviewed and certified by an independent qualified registered professional engineer that attests to the results of the evaluation.

264.572 Owners or operators of hazardous waste treatment, storage, and disposal facilities. [Added]

(a) To maintain records sufficient to document that all treated wood is held on the pad following treatment.

(b) To maintain, as part of the operating log, documentation of past operating and waste handling practices. This must include identification of preservative formulations used in the past, a description of drippage management practices, and a description of treated wood storage and handling practices.

264.573 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

To maintain the design and operating requirements inspection certification as part of the facility operating record.

264.1035 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

To maintain (a) an implementation schedule that includes dates by which the closed-vent system and control device will be installed and in operation; (b) up-to-date documentation of compliance with the process vent standards; (c) design documentation and monitoring, operating, and inspection information for each closed-vent system and control device requirement; and other information as specified in section cited.

264.1064 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

To maintain in the operating record (a) records on equipment identification number and hazardous waste management unit identification; (b) approximate locations within the facility; (c) type of equipment; (d) inspection log; (e) design documentation and monitoring, operating, and inspection information for each closed-vent system and control device requirements; and other such information as specified in section cited.

265.441 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

See 40 CFR 264.571.

265.443 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

See 40 CFR 264.572.

265.444 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

See 40 CFR 264.573.

265.1035 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

See 40 CFR 264.1035.

265.1064 Owners or operators of hazardous waste treatment, storage and disposal facilities. [Added]

See 40 CFR 264.1064.

268.7 Owners and operators of hazardous waste treatment, storage, and disposal facilities. [Amended]

To maintain on-site a copy of the notification and certification required for each waste shipment together with the tolling agreement.

Retention period: For at least 3 years after termination or expiration of the agreement. The 3-year retention requirement is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Administrator.

302.8 Persons in charge of vessels or facilities from which hazardous substances have been released in quantities that are equal to or greater than their reportable quantities (RQs). [Added]

To maintain on file at the facilities or in the case of vessels at the offices within the U.S., in either ports or calls, places of regular berthing, or the headquarters of the businesses operating the vessels, all notification supporting documents, materials and other information.

Retention period: 1 year.

501.15 Applicants for the State sludge management program.

To maintain records of all data used to complete permit applications and any supplemental information.

Retention period: 5 years from the date the application is signed or as required by 40 CFR Part 503.

501.15 Persons holding permits under the State sludge management program.

To retain records of all monitoring information, copies of all reports required by the permit, and records of all data used to complete the application for the permit.

Retention period: At least 5 years from the date of the sample, measurement, report or application, or longer as required by 40 CFR Part 503.

This period may be extended by request of the Director at any time.

721.17 Manufacturers, importers, and processors of chemical substances which EPA has determined are significant new uses under certain provisions of the Toxic Substances Control Act.

To maintain documentation of information contained in that person's significant new use notice.

Retention period: For a period of 5 years from the date of the submission of the significant new use notice.

721.72 Manufacturers, importers, and processors of substances; significant new use rules.

To maintain records documenting establishment and implementation of a hazard communication program. The hazard communication program will, at a minimum, describe how the requirements of this section for labels, MSDs, and other forms of warning material will be satisfied.

Retention period: 5 years from the date of creation.

721.125 Manufacturers, importers, and processors of substances; significant new use rules.

(a) To maintain records documenting the manufacture and importation volume of the substance and the corresponding dates of manufacture and import.

(b) To maintain records documenting volumes of the substance purchased in the United States by processors of the substance, names, and addresses of suppliers, and corresponding dates of purchases.

(c) To maintain records documenting establishing and implementation of a program for the use of any applicable personal protective equipment required under 40 CFR 721.63.

Retention period: 5 years from the date of their creation.

721.224 Manufacturers, importers, and processors of 2-chloro-N-methyl-N-substituted acetamide (generic name). [Added]

See 40 CFR 721.125.

721.263 Manufacturers, importers, and processors of substituted aliphatic acid halide (generic name). [Added]

See 40 CFR 721.125.

721.266 Manufacturers, importers, and processors of acrylamide, polymer with substituted alkylacrylamide salt (generic name). [Added]

See 40 CFR 721.125.

721.266 Manufacturers, importers, and processors of adipic acid, polymer with 1,4-cyclohexane-dimethanol, dipropylene glycol, alkanepolyol, substituted alkanolamines, and carbomonocyclic dicarboxylic acid (generic name). [Added]

See 40 CFR 721.125.

721.273 Manufacturers, importers, and processors of aliphatic diurethane acrylate ester. [Added]

See 40 CFR 721.125.

721.275 Manufacturers, importers, and processors of alkylidicarboxylic acids, polymers with alkanepolyol and TDI, alkanol blocked, acrylate. [Added]

See 40 CFR 721.125.

721.277 Manufacturers, importers, and processors of tert-Amyl peroxy alkylene ester (generic name). [Added]

See 40 CFR 721.125.

721.278 Manufacturers, importers, and processors of amino acrylate monomer. [Added]

See 40 CFR 721.125.

721.288 Manufacturers, importers, and processors of alkanepolyol phosphate ester (generic name). [Added]

See 40 CFR 721.125.

721.289 Manufacturers, importers, and processors of alkenoic acid, trisubstituted-benzyl-disubstituted-phenyl ester. [Added]

See 40 CFR 721.125.

721.290 Manufacturers, importers, and processors of alkenoic acid, trisubstituted-phenylalkyl-disubstituted-phenyl ester. [Added]

See 40 CFR 721.125.

721.291 Manufacturers, importers, and processors of monosubstituted alkoxyaminotrazines (generic name). [Added]

See 40 CFR 721.125.

721.293 Manufacturers, importers, and processors of amide of polyamine and organic acid. [Added]

See 40 CFR 721.125.

721.295 Manufacturers, importers, and processors of reaction products of secondary alkyl amines with a substituted benzenesulfonic acid and sulfuric acid (generic name). [Added]

See 40 CFR 721.125.

721.296 Manufacturers, importers, and processors of alkylphenoxypolyalkoxyamine (generic name). [Added]

See 40 CFR 721.125.

721.435 Manufacturers, importers, and processors of aromatic amine compound. [Added]

See 40 CFR 721.125.

721.440 Manufacturers, importers, and processors of aromatic nitro compound. [Added]

See 40 CFR 721.125.

721.445 Manufacturers, importers, and processors of sodium salt of an alkylated, sulfonated aromatic (generic name). [Added]

See 40 CFR 721.125.

721.450 Manufacturers, importers, and processors of substituted aromatic (generic). [Added]

See 40 CFR 721.125.

721.454 Manufacturers, importers, and processors of alkyl alkenoate, azobis-. [Added]

See 40 CFR 721.125.

721.467 Manufacturers, importers, and processors of benzene, substituted, alkyl acrylate derivative (generic name). [Added]

See 40 CFR 721.125.

721.523 Manufacturers, importers, and processors of brominated aromatic compound (generic name). [Added]

See 40 CFR 721.125.

721.555 Manufacturers, importers, and processors of 1, 3-benzenediamine, 4-(1,1-dimethylethyl)-ar-methyl complying with the significant new use rule requirements. [Added]

In addition to the requirements of 40 CFR 721.40, to maintain the following records:

(a) Any determination that gloves are impervious to the substance;
(b) Names of persons who have attended safety meetings, the dates of such meetings, and copies of any written information provided;

(c) Copies of any MSDSs used;
(d) Names and addresses of all persons to whom the substance is sold or transferred including shipment destination address, if different, the date of each transfer, and the quantity of substance sold or transfer on such date; and other such information as specified in cited section.

Retention period: 5 years after the records are created.

721.557 Manufacturers, importers, and processors of mixture of 1, 3-benzenediamine, 2-methyl-4,6-bis (methylthio)- and 1,3-benzenediamine, 4-methyl-2,6-bis (methylthio); significant new uses; Toxic Substances Control Act.

In addition to the requirements of 40 CFR 721.17, to maintain the following records: (a) Any determination that gloves are impervious to the substance; (b) names of persons who have attended safety meetings; the dates of such meetings, and copies of any written information provided; copies of any MSDSs used, names and addresses of all

persons to whom the PMN substance is sold or transferred including shipment destination address if different, the date of each sale or transfer, and the quantity of substance sold or transferred on such date; copies of any labels used; and other information as specified in cited section.

Retention period: 5 years after the date the records are created.

721.564 Manufacturers, importers, and processors of substituted benzenedicarboxylic acid, poly (alkyl acrylate) derivative. [Added]

See 40 CFR 721.125.

721.567 Manufacturers, importers, and processors of disulfonic acid rosin amine salt of a benzidine derivative (generic name). [Added]

See 40 CFR 721.125.

721.580 Manufacturers, importers, and processors of alkylbisoxalkyl (substituted 1,1-dimethylethylphenyl) benzotriazole (generic name). [Added]

See 40 CFR 721.125.

721.607 Manufacturers, importers, and processors of bisphenol A, epichlorohydrin, methylenebis (substituted carbomonocycle), polyalkylene glycol, alkanol, methacrylate polymer. [Added]

See 40 CFR 721.125.

721.609 Manufacturers, importers, and processors of bisphenol A, epichlorohydrin, polyalkylenepolyol and polyisocyanato derivative. [Added]

See 40 CFR 721.125.

721.612 Manufacturers, importers, and processors of N,N'-Bis (2,2-(3-alkyl) thiazoline vinyl)-1,4-phenylene diamine methyl sulfate double salt (generic name). [Added]

See 40 CFR 721.125.

721.617 Manufacturers, importers, and processors of boric acid, alkyl and substituted alkyl esters (generic name). [Added]

See 40 CFR 721.125.

721.740 Manufacturers, importers, and processors of phosphorylated caprolactone, alkylxoheteromonocycle and polyalkylene polyol alkyl ether (generic name). [Added]

See 40 CFR 721.125.

721.759 Manufacturers, importers, and processors of caprolactone, polymer with hexamethylene diisocyanate hydroalkyl acrylate ester, reaction products with substituted alkenoic acid and metal heteromonocycle. [Added]

See 40 CFR 721.125.

721.766 Manufacturers, importers, and processors of bis(substituted) carbomonocyclic azocarbomonocyclicol (generic name). [Added]

See 40 CFR 721.125.

721.767 Manufacturers, importers, and processors of carbamic acid, (trialkylsilylalkyl)-substituted acrylate ester. [Added]

See 40 CFR 721.125.

721.770 Manufacturers, importers, and processors of coconut oil, reaction products with tetrahydroxy branched alkane esters of trisubstituted benzenepropanoic acid (generic name). [Added]

See 40 CFR 721.125.

721.782 Manufacturers, importers, and processors of aromatic diamines (generic name). [Added]

See 40 CFR 721.125.

721.783 Manufacturers, importers, and processors of dialkenylamide (generic name). [Added]

See 40 CFR 721.125.

721.792 Manufacturers, importers, and processors of alkylated diarylamine, sulfurized (generic name). [Added]

See 40 CFR 721.125.

721.818 Manufacturers, importers, and processors of dimer acids, polymer with polyalkylene glycol, bisphenol A-diglycidyl ether, and alkylene polyols polyglycidyl ethers (generic name). [Added]

See 40 CFR 721.125.

721.821 Manufacturers, importers, and processors of 2,5-dimercapto-1,3,4-thiadiazole, alkyl polycarboxylate (generic name). [Added]

See 40 CFR 721.125.

721.853 Manufacturers, importers, and processors of alkylated diphenyl oxide (generic name). [Added]

See 40 CFR 721.125.

721.880 Manufacturers, importers, and processors of distillates (petroleum), C(3-6), polymers with styrene and mixed terpenes (generic name). [Added]

See 40 CFR 721.125.

721.953 Manufacturers, importers, and processors of reaction product of alkanediol and epichlorohydrin. [Added]

See 40 CFR 721.125.

721.960 Manufacturers, importers, and processors of acid modified acylated epoxide. [Added]

See 40 CFR 721.125.

721.976 Manufacturers, importers, and processors of perfluoroalkyl epoxide (generic name). [Added]

See 40 CFR 721.125.

721.977 Manufacturers, importers, and processors of modified acrylic ester (generic name). [Added]

See 40 CFR 721.125.

721.978 Manufacturers, importers, and processors of alkyl ester (generic name). [Added]

See 40 CFR 721.125.

721.979 Manufacturers, importers, and processors of substituted aminobenzoic acid ester (generic name). [Added]

See 40 CFR 721.125.

721.983 Manufacturers, importers, and processors of unsaturated amino alkyl (generic name). [Added]

See 40 CFR 721.125.

721.990 Manufacturers, importers, and processors of methacrylic ester. [Added]

See 40 CFR 721.125.

721.1005 Manufacturers, importers, and processors of vinyl epoxy ester. [Added]

See 40 CFR 721.125.

721.1027 Manufacturers, importers, and processors of aliphatic polyglycidyl ether. [Added]

See 40 CFR 721.125.

721.1032 Manufacturers, importers, and processors of perhalo alkoxy ether. [Added]

See 40 CFR 721.125.

721.1033 Manufacturers, importers, and processors of phosphorylated oxoheteromonocycle polyoxyethylene ether (generic name). [Added]

See 40 CFR 721.125.

721.1040 Manufacturers, importers, and processors of fatty acid amine salt (generic name). [Added]

See 40 CFR 721.125.

721.1045 Manufacturers, importers, and processors of trimethylolpropane fatty acid diacrylate. [Added]

See 40 CFR 721.125.

721.1060 Manufacturers, importers, and processors of formaldehyde, polymer with bisphenol A and substituted phenol (generic name). [Added]

See 40 CFR 721.125.

721.1078 Manufacturers, importers, and processors of haloalkyl substituted cyclic ethers. [Added]

See 40 CFR 721.125.

721.1082 Manufacturers, importers, and processors of substituted ethylene diamine, methyl sulfate quarterized (generic name). [Added]

See 40 CFR 721.125.

721.1125 Manufacturers, importers, and processors of substituted alkyl halide. [Added]

See 40 CFR 721.125.

721.1208 Manufacturers, importers, and processors of alkyl peroxy-2-ethyl hexanoate. [Added]

See 40 CFR 721.125.

721.1232 Manufacturers, importers, and processors of nitrophenoxylalkanoic acid substituted thiazino hydrazide (generic name). [Added]

See 40 CFR 721.125.

721.1235 Manufacturers, importers, and processors of hydrazinecarboxamide, N,N'-(methylenedi-4,1-phenylene)bis[2,2-dimethyl- [Added]

See 40 CFR 721.125.

721.1243 Manufacturers, importers, and processors of substituted hydroxylamine. [Added]

See 40 CFR 721.125.

721.1265 Manufacturers, importers, and processors of metal salts of complex inorganic oxyacids (generic name). [Added]

See 40 CFR 721.125.

721.1272 Manufacturers, importers, and processors of metalated alkylphenol copolymer (generic name). [Added]

See 40 CFR 721.125.

721.1285 Manufacturers, importers, and processors of hydroxyalkyl methacrylate, alkyl ester. [Added]

See 40 CFR 721.125.

721.1287 Manufacturers, importers, and processors of 2-(2-Hydroxy-3-tert-butyl-5-methylbenzyl)-4-methyl-6-tert-butylphenyl methacrylate. [Added]

See 40 CFR 721.125.

721.1290 Manufacturers, importers, and processors of substituted oxide alkylene polymer, metacrylate. [Added]

See 40 CFR 721.125.

721.1390 Manufacturers, importers, and processors of methylenebis (4-isocyanato benzene), polymer with polycaprolactone triol and alkoxyalkyl alkanepolyol, hydroxyalkyl methacrylate ester. [Added]

See 40 CFR 721.125.

721.1395 Manufacturers, importers, and processors of methylenebis(trisubstituted aniline) (generic name). [Added]

See 40 CFR 721.125.

721.1454 Manufacturers, importers, and processors of monoacrylate. [Added]

See 40 CFR 721.125.

721.1460 Manufacturers, importers, and processors of naphthalene, 1,2,3,4-tetrahydro (1-phenylethyl) (specific name). [Added]

See 40 CFR 721.125.

721.1465 Manufacturers, importers, and processors of 2-Naphthalenecarboxamide-N-aryl-3-hydroxy-4-aryloxy (generic name). [Added]

See 40 CFR 721.125.

721.1470 Manufacturers, importers, and processors of nickel acrylate complex. [Added]

See 40 CFR 721.125.

721.1475 Manufacturers, importers, and processors of substituted nitrile (generic name). [Added]

See 40 CFR 721.125.

721.1477 Manufacturers, importers, and processors of disubstituted nitrobenzene (generic name). [Added]

See 40 CFR 721.125.

721.1478 Manufacturers, importers, and processors of halonitrobenzoic acid, substituted (generic name). [Added]

See 40 CFR 721.125.

721.1483 Manufacturers, importers, and processors of substituted phosphate ester (generic). [Added]

See 40 CFR 721.125.

721.1488 Manufacturers, importers, and processors of Nitrothiophene-carboxylic acid, ethyl ester, bis [(((substituted)amino)alkylphenyl)azo] (generic name). [Added]

See 40 CFR 721.125.

721.1489 Manufacturers, importers, and processors of unsaturated organic compound. [Added]

See 40 CFR 721.125.

721.1490 Manufacturers, importers, and processors of 7-Oxabicyclo [4.1.0] heptane, 3-ethenyl, homopolymer, ether with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol (3:1), epoxidized. [Added]

See 40 CFR 721.125.

721.1491 Manufacturers, importers, and processors of substituted dialkyl oxazolone (generic name). [Added]

See 40 CFR 721.125.

721.1495 Manufacturers, importers, and processors of 2-oxepanone, polymer with 4,4'-(1-methylethylidene) bisphenol and 2,2-[1-methylethylidene]bis(4,1-phenyleneoxymethylene) bisoxirane, graft. [Added]

See 40 CFR 721.125.

721.1500 Manufacturers, importers, and processors of reaction product of hydroxyethyl acrylate and methyl oxirane. [Added]

See 40 CFR 721.125.

721.1504 Manufacturers, importers, and processors of substituted oxirane. [Added]

See 40 CFR 721.125.

721.1536 Manufacturers, importers, and processors of phenol, 4,4'-(9H-fluoren-9-ylidene)bis- [Added]

See 40 CFR 721.125.

721.1537 Manufacturers, importers, and processors of phenol, 4,4'-methylene-bis(2,6-dimethyl- [Added]

See 40 CFR 721.125.

721.1538 Manufacturers, importers, and processors of phenol, 4,4'-oxybis(2,1-ethanedithio)bis- [Added]

See 40 CFR 721.125.

721.1540 Manufacturers, importers, and processors of Phenol, 4,4'-[methylenebis(oxy-2,1-ethanedithio)] bis- [Added]

See 40 CFR 721.125.

721.1541 Manufacturers, importers, and processors of sulfurized alkylphenols. [Added]

See 40 CFR 721.125.

721.1542 Manufacturers, importers, and processors of trisubstituted phenol (generic name). [Added]

See 40 CFR 721.125.

721.1544 Manufacturers, importers, and processors of sulfur bridged substituted phenols (generic name). [Added]

See 40 CFR 721.125.

721.1560 Manufacturers, importers, and processors of 1,1-dimethylpropyl peroxyester (generic name). [Added]

See 40 CFR 721.125.

721.1565 Manufacturers, importers, and processors of substituted alkyl peroxyhexane carboxylate (mixed isomers) (generic name). [Added]

See 40 CFR 721.125.

721.1608 Manufacturers, importers, and processors of phosphonium salt (generic name). [Added]

See 40 CFR 721.125.

721.1611 Manufacturers, importers, and processors of phosphoric acid, 1,2-ethanedithiol tetrakis(2-chloro-1-methylethyl) ester. [Added]

See 40 CFR 721.125.

721.1612 Manufacturers, importers, and processors of polymer of alkyl carbomonocycle diisocyanate with alkanepolyol polyacrylate. [Added]

See 40 CFR 721.125.

721.1616 Manufacturers, importers, and processors of polyalkenepolyol alkylamine (generic name). [Added]

See 40 CFR 721.125.

721.1617 Manufacturers, importers, and processors of polyalkylpolyisilazane, bis (substituted acrylate). [Added]

See 40 CFR 721.125.

721.1621 Manufacturers, importers, and processors of epoxidized polybutene. [Added]

See 40 CFR 721.125.

721.1622 Manufacturers, importers, and processors of polymer. [Added]

See 40 CFR 721.125.

721.1624 Manufacturers, importers, and processors of polymer of adipic acid, alkanepolyol, alkylideneisocyanatocarbomonocycle, hydroxyalkyl acrylate ester. [Added]

See 40 CFR 721.125.

721.1630 Manufacturers, importers, and processors of polymer of alkane polyol and polyalkylpolyisocyanato-carbomonocycle, acetone oxime-blocked (generic name). [Added]

See 40 CFR 721.125.

721.1632 Manufacturers, importers, and processors of alkanolic acid, butanediol and cyclohexanediol-kanol polymer (generic name). [Added]

See 40 CFR 721.125.

721.1634 Manufacturers, importers, and processors of polymer of alkenolic acid, substituted alkylacrylate sodium salt (generic name). [Added]

See 40 CFR 721.125.

721.1638 Manufacturers, importers, and processors of polymer of substituted alkylphenol formaldehyde and phthalic anhydride, acrylate (generic name). [Added]

See 40 CFR 721.125.

721.1641 Manufacturers, importers, and processors of polymer of hydroxyethyl acrylate and polyisocyanate. [Added]

See 40 CFR 721.125.

721.1645 Manufacturers, importers, and processors of polymer of maleic anhydride, benzenedicarboxylic acid and disubstituted alkylamine (generic name). [Added]

See 40 CFR 721.125.

721.1646 Manufacturers, importers, and processors of polyethylenepolyamine and alkanediol diglycidyl ether. [Added]

See 40 CFR 721.125.

721.1648 Manufacturers, importers, and processors of polymer of styrene, substituted alkyl methacrylates, 2-ethylhexyl acrylate, methacrylic acid and substituted bis(benzene). [Added]

See 40 CFR 721.125.

721.1700 Manufacturers, importers, and processors of poly(oxy-1,4-butanediol), α -(1-oxo-2-propenyl)- ω [(1-oxo-2-propenyl)oxy]-. [Added]

See 40 CFR 721.125.

- 721.1710** Manufacturers, importers, and processors of polyol carboxylate ester. [Added]
See 40 CFR 721.125.
- 721.1712** Manufacturers, importers, and processors of nitrate polyether polyol (generic name). [Added]
See 40 CFR 721.125.
- 721.1715** Manufacturers, importers, and processors of alkoxyated alkane polyol, polyacrylate ester. [Added]
See 40 CFR 721.125.
- 721.1725** Manufacturers, importers, and processors of polysubstituted polyol. [Added]
See 40 CFR 721.125.
- 721.1740** Manufacturers, importers, and processors of substituted acrylated alkoxyated aliphatic polyol. [Added]
See 40 CFR 721.125.
- 721.1760** Manufacturers, importers, and processors of alkyl (heterocyclic) phenylazohetero monocyclic polyone (generic name). [Added]
See 40 CFR 721.125.
- 721.1763** Manufacturers, importers, and processors of alkyl (heterocyclic) phenylazohetero monocyclic polyone, (alkylimidazolyl) methyl derivative (generic name). [Added]
See 40 CFR 721.125.
- 721.1778** Manufacturers, importers, and processors of poly(oxo-1,2-ethanediyl)- α -(2-methyl-1-oxo-2-propenyl)- C_{10-16} -alkyl ethers. [Added]
See 40 CFR 721.125.
- 721.1790** Manufacturers, importers, and processors of polyurethane. [Added]
See 40 CFR 721.125.
- 721.1795** Manufacturers, importers, and processors of 1,3-propanediamine, N,N'-1,2-ethanediylbis-, polymer with 2,4,6-trichloro-1,3,5-triazine, reaction products with N-butyl-2,2,6,6-tetramethyl-4-piperidinamine. [Added]
See 40 CFR 721.125.
- 721.1805** Manufacturers, importers, and processors of 2-propenoic acid, 3-(dimethylamino)-2,2-dimethyl-propyl ester. [Added]
See 40 CFR 721.125.
- 721.1810** Manufacturers, importers, and processors of 2-propenoic acid, 2-hydroxybutyl ester. [Added]
See 40 CFR 721.125.
- 721.1814** Manufacturers, importers, and processors of 2-propenoic acid, 1-(hydroxymethyl) propyl ester. [Added]
See 40 CFR 721.125.
- 721.1815** Manufacturers, importers, and processors of 2-propenoic acid, 7-oxabicyclo [4.1.0] hept-3-ylmethyl ester. [Added]
See 40 CFR 721.125.
- 721.1816** Manufacturers, importers, and processors of 2-propenoic acid, 3,3,5-trimethylcyclohexyl ester. [Added]
See 40 CFR 721.125.
- 721.1818** Manufacturers, importers, and processors of 2-propenoic acid, 2-methyl-1,1-dimethylethyl ester. [Added]
See 40 CFR 721.125.
- 721.1822** Manufacturers, importers, and processors of 2-propenoic acid, 2-methyl-7-oxabicyclo [4.1.0] hept-3-ylmethyl ester. [Added]
See 40 CFR 721.125.
- 721.1824** Manufacturers, importers, and processors of 2-propenoic acid, 2-methyl-,3,3,5-trimethylcyclohexyl ester. [Added]
See 40 CFR 721.125.
- 721.1828** Manufacturers, importers, and processors of 2-propenoic acid, 2-methyl-,7,7,9-trimethyl-4,13-dioxo-3,14-dioxo-5,12-diazahexadecane, 1,16-diyl ester. [Added]
See 40 CFR 721.125.
- 721.1887** Manufacturers, importers, and processors of epoxy resin. [Added]
See 40 CFR 721.125.
- 721.1889** Manufacturers, importers, and processors of resorcinol, formaldehyde substituted carbomonomer resin. [Added]
See 40 CFR 721.125.
- 721.1890** Manufacturers, importers, and processors of carboxy rilyl salt (generic name). [Added]
See 40 CFR 721.125.
- 721.1895** Manufacturers, importers, and processors of silane, (1,1-dimethylethoxy) dimethoxy (2-methyl propyl)- [Added]
See 40 CFR 721.125.
- 721.2070** Manufacturers, importers, and processors of alkylene glycol terephthalate and substituted benzoate esters (generic name). [Added]
See 40 CFR 721.125.
- 721.2075** Manufacturers, importers, and processors of terpenes and terpenoids, limonene fraction, polymer with substituted carbopolycycles (generic name). [Added]
See 40 CFR 721.125.
- 721.2132** Manufacturers, importers, and processors of tetraglycidalamines (generic name). [Added]
See 40 CFR 721.125.
- 721.2155** Manufacturers, importers, and processors of 3,3',5,5' tetramethylbiphenyl-4,4'-diol. [Added]
See 40 CFR 721.125.
- 721.2180** Manufacturers, importers, and processors of substituted thiazino hydrazine salt (generic name). [Added]
See 40 CFR 721.125.
- 721.2188** Manufacturers, importers, and processors of 1,3,5-triazine,2,4,6-triamine, hydrobromide. [Added]
See 40 CFR 721.125.
- 721.2192** Manufacturers, importers, and processors of disubstituted alkyl triazines (generic name). [Added]
See 40 CFR 721.125.
- 721.2194** Manufacturers, importers, and processors of substituted triazine isocyanurate (generic name). [Added]
See 40 CFR 721.125.
- 721.2196** Manufacturers, importers, and processors of poly(substituted triazinyl) piperazine (generic name). [Added]
See 40 CFR 721.125.
- 721.2480** Manufacturers, importers, and processors of urea, condensate with poly [oxy (methyl-1,2ethanediyl)]- α -2-aminomethylethyl)- ω -(2-aminoethylethoxy) (generic name). [Added]
See 40 CFR 721.125.
- 721.2490** Manufacturers, importers, and processors of urea, (hexahydro-6-methyl-2-oxopyrimidinyl)- [Added]
See 40 CFR 721.125.
- 721.2500** Manufacturers, importers, and processors of polyamine unreaformaldehyde condensate (specific name). [Added]
See 40 CFR 721.125.
- 721.2555** Manufacturers, importers, and processors of urethane acrylate. [Added]
See 40 CFR 721.125.
- 721.2568** Manufacturers, importers, and processors of polyaromatic urethane. [Added]
See 40 CFR 721.125.
- 721.2585** Manufacturers, importers, and processors of 3-alkyl-2-(2-aniline) vinyl thiazolinium salt (generic name). [Added]
See 40 CFR 721.125.
- 749.68** Persons distributing in commerce hexavalent chromium-based water treatment chemicals for use in cooling systems after February 20, 1990. [Added]
To retain in one location at the headquarters of the distribution documentation showing (a) the name, address, contact, and telephone number of the cooling system owners/operations to whom the chemicals were shipped and (b) the chemicals included in the shipment, the amount of each chemical shipped, and the location(s) at which the chemical will be used.
Retention period: 2 years from the date of shipment.

760.218 Disposal facilities, generators, and commercial storers of PCB waste.

To keep a copy of each Certificate of Disposal.

Retention period: See 40 CFR 761.180.

761.180 Owners or operators of facilities used to dispose of PCBs. [Added]

To maintain annual records on disposal, storage, chemical waste landfills, incineration, high efficiency broilers, and other documentation as specified in section cited.

Retention period: 3 years; chemical waste landfill data 20 years.

761.209 Transporters of PCB waste.

To maintain a copy of the manifest signed by the generator, transporter, and the next designated transporter, if applicable, or the owner or operator of the designated commercial storage or disposal facility.

Retention period: 3 years from the date the PCB waste was accepted by the initial transporter. Record retention period may be extended automatically during the course of any outstanding enforcement action regarding the regulated activity.

761.209 Generators of PCB waste.

To keep a copy of each manifest signed until a signed copy from the designated commercial storage or disposal facility which received the PCB waste is received.

Retention period: 3 years from the date the PCB waste was accepted by the initial transporter. Record retention period may be extended automatically during the course of any outstanding enforcement action regarding the regulated activity.

761.209 Water (bulk shipment) transporters of PCB waste.

To retain a copy of the shipping papers for shipments of PCB waste delivered to designated commercial storage or disposal facility by water (bulk shipment).

Retention period: 3 years from the date the PCB waste was accepted by the initial transporter. Record retention period may be extended automatically during the course of any outstanding enforcement action regarding the regulated activity.

761.209 Initial rail transporters of PCB waste.

To maintain a copy of the manifest and the shipping paper required to accompany the PCB waste.

Retention period: 3 years from the date the PCB waste was accepted by the initial transporter. Record retention period may be extended during the

course of any outstanding enforcement action regarding the regulated activity.

761.209 Final rail transporters of PCB waste.

To keep a copy of the signed manifest, or the required shipping paper if signed by the designated facility in lieu of the manifest.

Retention period: 3 years from the date the PCB waste was accepted by the initial transporter. Record retention period may be extended automatically during the course of any outstanding enforcement action regarding the regulated activity.

763.178 Persons producing an asbestos-containing product that is subject to a labeling requirements.

To maintain a copy of the label used in compliance.

Retention period: 3 years after the effective date of the ban on distribution in commerce for the product which the labeling requirements apply.

763.178 Persons producing an asbestos-containing product that is subject to a manufacture, importation and/or processing ban.

To maintain the results of the inventory for the banned product.

Retention period: 3 years after the effective date of the ban on manufacture, importation, and processing.

763.178 Persons whose asbestos-producing activities are subject to the manufacture, importation, processing and distribution in commerce bans.

To maintain all commercial transactions regarding the product including the date of purchases and sale and the quantities purchased or sold.

Retention period: 3 years after the effective date of the ban on distribution in commerce for a product.

792.29 Toxic substances control testing facilities.

To maintain a current summary of training and experience and job description for each individual engaged in or supervising the conduct of a study.

Retention period: 10 years.

792.31 Toxic substances control testing facility management.

To document and maintain such action as raw data, records on the replacement of the study director if it becomes necessary to do so during the conduct of a study.

Retention period: 10 years.

792.33 Toxic substances control testing facilities study directors.

To maintain and verify (a) all experimental data, including

observations of unanticipated responses of test systems; (b) notes on unforeseen circumstances that may affect the quality and integrity of the study when they occur; and (c) documentation of the corrective action taken.

Retention period: In accordance with 40 CFR 792.195.

792.35 Toxic substances control testing facility quality assurance units.

To maintain a copy of a master schedule sheet of all studies conducted at the testing facility; copies of all protocols pertaining to all studies for which the unit is responsible; and copies of written and properly signed records of each periodic inspection.

Retention period: Indefinitely.

792.63 Toxic substances control testing facility quality assurance units.

To maintain records of all inspection, maintenance, testing, calibrating, standardizing operations, and nonroutine repairs performed on equipment as a result of failure and malfunction.

Retention period: 10 years.

792.81 Toxic substances control testing facilities.

To maintain a historical file of standard operating procedures and all revisions thereof, including the dates of such revisions.

Retention period: In accordance with 40 CFR 792.195.

792.90 Toxic substances control testing facilities.

To maintain as raw data documentation of the analyses of feed and water used for the animals to ensure that contaminants known to be capable of interfering with the study and reasonably expected to be present in such feed or water are not present at levels above those specified in protocol and to maintain documentation of any use of pest control materials.

Retention period: In accordance with 40 CFR 792.195.

792.105 Toxic substances control testing facilities.

(a) For each batch, to maintain documentation on the identity, strength, purity, and composition or other characteristics which will appropriately define the test or control substance.

(b) To maintain documentation on the methods, fabrication, or derivation of the test and control substances.

(c) For studies of more than 4 weeks' duration, to reserve samples from each batch of test-control substances.

Retention period: In accordance with 40 CFR 792.195.

792.185 Sponsors and toxic substances control testing facilities.

For each study, to maintain a copy of the final report and of any amendments to it.

Retention period: In accordance with 40 CFR 792.195.

792.190 Toxic substances control testing facilities.

(a) To maintain all raw data, documentation, records, protocols, specimens, and final reports generated as a result of a study.

(b) To maintain correspondence and other documents relating to interpretation and evaluation of data, other than those documents contained in the final report.

Retention period: See 40 CFR 792.195.

792.195 Toxic substances control testing facilities—retention period.

(a) Documentation records, raw data, and specimens pertaining to a study and required to be retained by 40 CFR Part 792 shall be retained in the archive(s) for a period of at least 10 years following the effective date of the applicable final test rule.

(b) In the case of negotiated testing agreement, documentation records, raw data, and specimens pertaining to a study and required to be retained by 40 CFR Part 792 shall be retained in the archive(s) for a period of at least 10 years following the publication date of the acceptance of a negotiated test agreement.

(c) In the case of testing submitted under section 5, documentation records, raw data, and specimens pertaining to a study and required to be retained under 40 CFR Part 792 shall be retained in the archive(s) for a period of at least 5 years following the date on which the results of the study are submitted to the agency.

(d) Wet specimens, samples of test, control or reference substances, and specially prepared material which are relatively fragile and differ markedly in stability and quality during storage shall be retained only as long as the quality of the preparation affords evaluation. Specimens obtained from mutagenicity tests, specimens of soil, water-plants, and wet specimens of blood, urine, feces, biological fluids, do not need to be retained after quality assurance verification.

(e) Master schedule sheet, copies of protocols, records of quality assurance inspections, summaries of training, experience and job description, and records and reports of the maintenance and calibration shall be retained for the

length of time specified in 40 CFR 792.195(b).

HEALTH AND HUMAN SERVICES DEPARTMENT

Public Health Service

42 CFR

50.103 PHS awardees and applicants institutions for dealing with and reporting possible misconduct in science.

To maintain sufficiently detailed documentation of inquiries to permit a later assessment of the reasons for determining that an investigation was not warranted.

Retention period: For a period of at least 3 years after the termination of the inquiry and shall, upon request, be provided to authorized HHS personnel.

57.2610 Schools of nursing, medicine, and public health or nonprofit private hospitals and other public or nonprofit private entities receiving Nurse Practitioner Traineeship Programs Grants. [Revised]

(a) To maintain the signed statement of appointment as part of the trainee's report.

(b) To maintain an accurate, complete, and retrievable record on each individual who receives a traineeship.

Retention period: Until the trainee's practice commitment is fulfilled or any amount the United States is owed has been paid or waived.

57.4110 Recipients of grants for faculty Training Projects in Geriatric Medicine and Dentistry. [Added]

To retain original copy of the statement which documents the appointment of each fellow. The copy of the statement must be available for program review and financial audit and shall be provided to the fellow for his or her records.

Health Care Financing Administration

42 CFR

405.1101-405.1137 Skilled nursing facilities which have filed agreements to participate in the health insurance for the aged and disabled program. [Removed, 1989]

405.1201-405.1230 Home health agencies which have filed agreements to participate in the health insurance for the aged and disabled program. [Redesignated, 1989; as Part 484]

433.322 State Medicaid agencies.

To maintain separate records of all overpayment activities for each provider in a manner that satisfies the retention and access requirements of 45 CFR Part 74, Subpart D.

435.945 State agencies participating in Medicaid program.

To retain a record of all information items received, including those not followed up and such records shall be made available for quality control review purposes.

Part 442, Subpart F Institutions providing skilled nursing and intermediate care facility services under a State plan for medical assistance. [Removed, 1989]

483.10 Long term care facilities participating in Medicare and Medicaid.

To maintain records that assure full and complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the facility on the resident's behalf.

Retention period: See 42 CFR 483.75.

483.12 Long term care facilities participating in Medicare and Medicaid.

To maintain in the resident's clinical records, documentation of the transfer or discharge of the resident.

Retention period: See 42 CFR 483.75.

483.60 Long term care facilities participating in Medicare and Medicaid.

To maintain records of receipt and disposition of all controlled drugs in sufficient detail to enable an accurate reconciliation.

Retention period: See 42 CFR 483.75.

483.65 Long term care facilities participating in Medicare and Medicaid.

To maintain records of incident and corrective actions related to infections

Retention period: See 42 CFR 483.75.

483.75 Long term care facilities participating in Medicare and Medicaid.

To maintain clinical records that contain (a) sufficient information to identify the resident; (b) resident's assessments; (c) the plan of care and services provided (d) the results of a preadmission screening conducted by the State; and (e) progress notes.

Retention period: The period of time required by State laws; or 5 years from the date of discharge when there is no requirement in State law; or for a minor, 3 years after a resident reaches legal age under State law.

484.10 Home health agencies; medical programs.

To maintain documentation showing compliance with patient rights requirements.

484.36 Home health agencies; medicare program.

To maintain documentation which demonstrates that the competency evaluation standards are met.

484.48 Home health agencies; medical records.

To maintain for every patient receiving home health services, clinical records containing past and current findings in accordance with accepted professional standards. In addition to the plan of care, the records contain appropriate identifying information; name of physician; drug, dietary, treatment and activity orders; signed and dated clinical and progress notes; copies of summary reports sent to the attending physician; and a discharge summary.

Retention period: 5 years after the month the cost report to which the records apply is filed with the intermediary, unless State law stipulates a longer period of time. Policies provide for retention even if the HHA discontinues operations. If a patient is transferred to another health facility, a copy of the record or abstract is sent with the patient.

493.801 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs. [Added]

To maintain records on handling, preparation, processing, examination and steps in the testing and reporting of results for all proficiency testing samples, including a copy of the proficiency testing program report forms used by the laboratory to record proficiency testing results.

Retention period: For a minimum of 2 years from the date of the proficiency testing event.

493.823 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-Bacteriology. [Added]

To maintain documentation of all remedial action taken to correct problems associated with a proficiency testing failure.

Retention period: 2 years from the date of participation in proficiency testing event.

493.825 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-Mycobacteriology. [Added]

See 42 CFR 493.823.

493.827 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-Mycology. [Added]

See 42 CFR 493.823.

493.829 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-Parasitology. [Added]

See 42 CFR 493.823.

493.831 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-Virology. [Added]

See 42 CFR 493.823.

493.835 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-Syphilis serology. [Added]

See 42 CFR 493.823.

493.837 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-General Immunology. [Added]

See 42 CFR 493.823.

493.841 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-Routine chemistry. [Added]

See 42 CFR 493.823.

493.843 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-Endocrinology. [Added]

See 42 CFR 493.823.

493.845 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-Toxicology. [Added]

See 42 CFR 493.823.

493.847 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-Urinalysis. [Added]

See 42 CFR 493.823.

493.851 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-Hematology. [Added]

See 42 CFR 493.823.

493.859 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-ABO group and Rh(D) group. [Added]

See 42 CFR 493.823.

493.861 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-Unexpected antibody detection. [Added]

See 42 CFR 493.823.

493.863 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-Compatibility testing. [Added]

See 42 CFR 493.823.

493.865 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-Antibody Identification. [Added]

See 42 CFR 493.823.

493.1101 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs. [Added]

(a) To maintain records of test requisitions and patient testing.

Retention period: At least 2 years.

(b) To maintain a legally reproduced record of each test result, including preliminary reports.

Retention period: 2 years after date of reporting. Immunohematology reports—2 years. Pathology test reports—10 years after the date of reporting.

493.1211 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs-procedure manual. [Added]

To maintain copies of each procedure it uses and length of time the procedure was in use.

Retention period: 2 years after a procedure has been discontinued.

493.1215 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs. [Added]

(a) To maintain documentation for the validation of each method that verifies that the method produces test results within the laboratory's stated performance characteristics.

Retention period: Documentation of the validation must be available for the period during which the procedure is used by the laboratory or for 2 years, whichever is longer and must be available to the authorized persons ordering or receiving test results.

Documentation verifying that test systems perform according to the laboratory's specifications must be available to the authorized persons ordering or receiving test results.

493.1221 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs. [Added]

To maintain records of all quality control activities and of each step in processing and testing of quality control samples to assure that the quality

control samples are tested in the same manner as patient samples.

Retention period: (a) 2 years; (b) Immunohematology quality control records—5 years.

493.1223 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Quality control—specialties and subspecialties. [Added]

See 42 CFR 493.1221.

493.1225 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Microbiology. [Added]

See 42 CFR 493.1221.

493.1227 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Bacteriology. [Added]

See 42 CFR 493.1221.

493.1229 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Mycobacteriology. [Added]

See 42 CFR 493.1221.

493.1231 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Mycology. [Added]

See 42 CFR 493.1221.

493.1233 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Parasitology. [Added]

See 42 CFR 493.1221.

493.1235 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Virology (quality control). [Added]

To maintain records that reflect the systems used and the reactions observed.

493.1237 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Diagnostic Immunology. [Added]

See 42 CFR 493.1221.

493.1239 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Syphilis serology. [Added]

See 42 CFR 493.1221.

493.1241 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—General Immunology. [Added]

See 42 CFR 493.1221.

493.1243 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Chemistry. [Added]

See 42 CFR 493.1221.

493.1245 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Routine chemistry. [Added]

See 42 CFR 493.1221.

493.1247 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Endocrinology. [Added]

See 42 CFR 493.1221.

493.1251 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Urinalysis. [Added]

See 42 CFR 493.1221.

493.1253 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Hematology. [Added]

See 42 CFR 493.1221.

493.1255 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Pathology. [Added]

See 42 CFR 493.1221.

493.1257 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Quality control requirements for cytology. [Added]

(a) To maintain records of the number of slides examined by each individual during each 24 hour period and the number of hours each individual spends examining slides in the 24 hour period.

(b) To retain all normal, negative and unsatisfactory slide preparations.

Retention period 5 years from date of examination.

493.1259 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Histopathology. [Added]

To retain (a) stained slides and (b) specimen blocks.

Retention period: (a) At least 10 years from date of examination and (b) at least 2 years from date of examination.

493.1261 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Oral pathology. [Added]

See 42 CFR 493.1211, 493.1215, 493.1221, and 493.1259.

493.1263 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Radioassay. [Added]

See 42 CFR 493.1211, 493.1215, 493.1221, and 493.1259.

493.1265 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Histocompatibility. [Added]

To maintain records of the test results for each individual (previously tested specimen is given at least once each month to each individual performing tests as an unknown to verify ability to reproduce test results).

493.1273 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Immunohematological, collection, processing, dating periods, labeling and distribution of blood and blood products. [Added]

See 42 CFR 493.1221.

493.1285 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Facilities investigating transfusion reactions. [Added]

To document that all necessary remedial actions are taken to prevent recurrences and that all policies and procedures are reviewed to assure that they are adequate to ensure the safety of individuals being transfused within the facility.

493.1501 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Quality assurance. [Added]

To maintain records of quality assurance program, document all corrective actions taken to remedy problems identified and make records of corrective actions available to HHS or its designee.

Retention period: 2 years unless other time frames are specified or HH/S specifies a different intervals in Appendix C of the State Operations Manual (HCFA Pub. 7).

493.1601 Laboratories regulated under the Medicare, Medicaid and Clinical Laboratories Improvement Act of 1967 (CLIA'67) Programs—Inspection. [Added]

See 42 CFR 493.1501.

494.56 Suppliers of screening mammography services furnished to Medicare beneficiaries. [Added]

To maintain records to show that each employee is qualified for his or her position by means of appropriate State

licensure, other certification, training, and experience.

Retention period: Not specified.

494.58 Suppliers of screening mammography services furnished to Medicare beneficiaries. [Added]

To maintain records of previous screening mammographies obtained and of current and subsequent screening performed.

Retention period: At least 60 calendar months following the date of service or longer if required by State laws. If the supplier should cease to exist before the end of the 60 month period, the records must be transferred to the woman or her primary care provider.

494.64 Suppliers of screening mammography services furnished to Medicare beneficiaries. [Added]

To maintain records of qualified personnel assignments responsible for equipment quality assurance program specific to mammography imagery and covering all components of the x-ray system, from the x-ray generator to the image developer, to ensure consistently high-quality images with minimum patient exposure.

INTERIOR DEPARTMENT

Office of the Secretary

43 CFR

17.323 Recipients of Federal financial assistance from DOI.

To keep records in a form and containing information which Department of the Interior determines may be necessary to ascertain whether compliance of the Age Discrimination Act of 1975, as amended, has been met.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR

7.933 Recipients of Federal financial assistance from FEMA. [Added]

To maintain records in a form acceptable to FEMA and containing information which FEMA determines are necessary to ascertain compliance with the Age Discrimination Act of 1975.

206.16 Persons requesting funds under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

To maintain all books, documents, papers, and records relating to any activity undertaken or funded under the Stafford Act.

220.18 States implementing temporary relocation assistance under the Superfund Program.

To maintain adequate documentation to enable analysis of the program in accordance with regulations, manuals, handbooks, and guidance.

Retention period: Not specified.

HEALTH AND HUMAN SERVICES DEPARTMENT

Office of Family Assistance

45 CFR

250.76 State IV-A agencies participating in the Job Opportunities and Basic Skills Training Program.

To maintain financial records and accounts.

Retention period: Not specified.

250.82 State IV-A agencies participating in the Job Opportunities and Basic Skills Training Program.

To maintain an individual case record for each JOB participant.

Office of Child Support Enforcement

45 CFR

303.11 Child support enforcement (IV-D) agencies.

To retain all records for cases closed.

Retention period: For a minimum of 3 years in accordance with 45 CFR Part 74, Subpart D.

TRANSPORTATION DEPARTMENT

Coast Guard

46 CFR

160.176-17 Manufacturers of inflatable lifejackets.

To keep records required by 46 CFR 159.007-13. Such records must also include (a) for each test, the serial number of the test instrument used if there is more than one available; (b) for each test and inspection, the identification of the samples used, the lot number, the approved number, and the number of lifejackets in the lot; (c) for each lot rejected, the cause for rejection, any corrective action taken, and the final disposition of the lot; (d) records of all materials used in production and other such information as specified in cited section.

Retention period: 120 months after preparation.

160.176-19 Inflatable lifejacket servicing facilities.

To maintain records of all completed servicing. Such records must include at least the following: (a) Date of servicing, number of lifejackets serviced, lot

identification of the person conducting the servicing; (b) identity of the vessel receiving the serviced lifejackets; and (c) date of return to the vessel.

Retention period: For at least 5 years after records are made and records must be made available to any Coast Guard representative and independent laboratory inspection upon request.

272.7 Operators of operating-differential subsidized vessels. [Removed; record retention requirements now in 272.41]

272.41 Operators of operating-differential subsidized vessels. [Added]

To maintain files arranged by vessel and voyage, which shall include, at a minimum, a copy of the Region Office notice letter, a copy of the Form MA-140 with all supporting documents submitted therewith and the condition survey report.

Retention period: Not less than 3 years after completion of the audit.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR

2.954 Importers or manufacturers of radio frequency equipment subject to verification.

To maintain adequate identification records to facilitate positive identification for each verified device.

Retention period: Not specified.

2.955 Manufacturers (or importers of radio frequency equipment subject to verification).

To maintain records of the original design drawings and specifications and of the procedures used for production, inspection, and testing. To also maintain a record of the measurements made on appropriate test site that demonstrates compliance with applicable records. The record shall identify the measurement procedure that was used and shall include all the data required to show compliance with the appropriate regulations, and other records as specified in cited section.

Retention period: 2 years.

2.975 Manufacturers (or importers) of radio frequency equipment subject to verification.

To maintain records of measurement data, measurement procedures, photographs, circuit diagrams, etc. for the device to which the application applies.

Retention period: 2 years after the manufacturer of said equipment has been permanently discontinued, or until the conclusion of an investigation or proceeding if the holder of the grant of

equipment authorization is officially notified that an investigation or any other administrative proceeding involving the equipment has been instituted.

15.201 Holders of grants of certifications for perimeter protection systems operating in the frequency bands allocated to television broadcast stations.

To maintain a list of all installations and records of measurements.

Retention period: Not specified.

15.312 Holders of grants of authorization of perimeter protection systems.
[Removed, 1989; record retention requirements now in 15.201]

22.117 Licensees in the public mobile radio services. [Amended]

To retain as part of the records a copy of a completed table MOB III found in FCC Form 401. Records shall be made available to the Commission upon request.

Retention period: Not specified.

95.111 Licensees of personal radio services stations transferring control of a corporation. [Added]

To keep as part of the General Mobile Radio Service (GMRS) system records the FCC document granting the consent for the change of control. See also 47 CFR 95.113.

97.5 Licensees of amateur radio stations.

To maintain at the station the original written authorization document or photocopy which authorizes the use in accordance with the FCC rules of all transmitting apparatus under the physical control of the station licensee at points where the amateur service is regulated by the FCC.

97.28 Persons administering examinations for amateur station operator licenses.
[Removed, 1989]

97.36 Volunteer examiner coordinators and volunteer examiners preparing, processing or administering examinations for amateur station operator licenses.
[Removed, 1989; record retention requirements now in 97.527]

97.71 Licensees of amateur radio service.
[Removed, 1989; record retention requirements now in 97.311]

97.82 Licensees of amateur radio stations.

[Removed, 1989]

97.83 Licensees of amateur radio stations.
[Removed, 1989]

97.88 Licensees of amateur radio stations.
[Removed, 1989]

97.90 Licensees of amateur radio stations.
[Removed, 1989]

97.103 Licensees of amateur radio stations.

When deemed necessary by an Engineer in Charge (EIC) to assure compliance with the FCC rules, to maintain a record of station operations containing such items of information as the EIC may require in accordance with 47 CFR 0.314(x) of the FCC rules.

97.311 Licensees of amateur radio stations.

To maintain records documenting all SS emission transmissions. Such records must include sufficient information to enable the FCC using the information contained therein, to demodulate all transmissions.

Retention period: 1 year following the last entry.

97.527 Volunteer examiners and volunteer examiner coordinators preparing, processing, or administering examinations for amateur station operator licenses.

To maintain records of out-of-pocket expenses and reimbursement for each examination session.

Retention period: 3 years.

99.25 Licensees of disaster communications service radio stations.
[Removed]

99.27 Licensees of disaster communications service radio stations.
[Removed]

GENERAL SERVICES ADMINISTRATION

48 CFR

52.203-8 Contractors holding certificates of procurement integrity. [Added]

To maintain certifications.

Retention period: 6 years from the date a certifying employee's employment with the company ends or, for an agent, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the contractor.

52.203-9 Contractors holding certificate of procurement integrity-modification.

See 48 CFR 52.203-8.

52.215-2 Contractors having cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contracts.

(a) To maintain books, records, documents, and other evidence and accounting procedures and practices, sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing this contract.

(b) To maintain books, records, documents and other data (including computations and projections) related to negotiating, pricing, or performing the contract or modification, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data.

Retention period: 3 years after final payment or for any shorter period as specified in 48 CFR Subpart 4.7, or for any longer period required by statute or by other clauses of the contract. If the contract is completely or partially terminated, the records relating to the work terminated shall be retained for 3 years after any resulting final termination settlement; and records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to the claims shall be retained until such appeals, litigation, or claims are disposed of.

52.215-32 Contractors submitting the Certificate of Commercial Pricing.
[Revised]

To maintain books, records, documents and other data relating to the pricing of commercial items.

Retention period: 3 years after final payment.

52.222-41 Contractors and subcontractors performing work subject to the Service Contract Act of 1965, as amended.

To maintain the following records for each employee subject to the Act: (a) Name and address and social security number; (b) correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensations; (c) daily and weekly hours worked by each employee; (d) any deductions, rebates, or refunds from the total daily or weekly compensation of each employee; and other such information as specified in cited section.

Retention period: 3 years from the completion of the work. Such records shall be made available for inspection and transcription by authorized representatives of the Wage and Hour

Division, Employment Standards Administration.

52.222-43 Contractors subject to the Fair Labor Standards Act and Service Contract Act—price adjustment (multiple year and option contracts).

To maintain any directly pertinent books, documents, papers, and records.

Retention period: Until the expiration of 3 years after final payment under the contract.

DEFENSE DEPARTMENT

48 CFR

252.208-7005 Contractors with contracts containing required sources for forging and welded shipboard anchor chain items. [Revised]

See 252.208-7000.

252.222-7000 Contractors with fixed price contracts containing potential application of the Service Contract Act, as amended clause. [Removed, 1989]

GENERAL SERVICES ADMINISTRATION

48 CFR

552.222-85 Contractors having fixed-price service contracts containing the Fair Labor Standards Act and Service Contract Act—price adjustment clause. [Removed, 1989]

552.222-86 Contractors having fixed-price contracts containing the Fair Labor Standards Act and Service Contract Act—price adjustment (multi-year and option contracts) clause. [Removed, 1989]

552.246-72 Contractors having contracts for supplies when such contracts contain source inspection clause.

To maintain at the point for source inspection, records showing for each order received under the contract: (a) Order number; (b) date order received; (c) quantity ordered; (d) date scheduled into production; (e) batch or lot number, if applicable; (f) date inspected and/or tested; (g) date available for shipment; and (h) date shipped or date service completed; and (i) National Stock Number (NSN), or if none is provided in the contract, the applicable item number of other contractual identification.

Retention period: At least 12 months after contract performance is completed.

552.246-73 Contractors having contracts

for supplies when such contracts contain source inspection clause. [Revised, 1989; record retention requirements now in 552.246-72]

OFFICE OF PERSONNEL MANAGEMENT

48 CFR

1652.204-70 Federal employees health benefits carriers. [Added]

To retain and make available all records applicable to a contract term that support the annual statement of operations and the rate submission for the contract term.

Retention period: 5 years after the end of the contract term to which the records relate, except that individual enrollee and/or patient claim records shall be maintained for 3 years after the end of the contract term to which the claim records relate.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR

1852.222-41 Contractors and subcontractors performing work subject to the Service Contract Act of 1965, as amended (April 1984).

To maintain records containing the following information for each employee subject to the Act: (a) Name and address and social security number of each employee; (b) correct work classification or declassifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee; (c) number of daily and weekly hours so worked by each employee; (d) any deductions, rebates, or funds from the total daily or weekly compensation of each employee; and (e) a list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representatives.

Retention period: 3 years from the completion of the work.

1852.222-43 Contractors having contracts containing the Fair Labor Standards Act and Service Contract Act—Price Adjustment (April 1984) clause.

To maintain any directly books, documents, papers, and records.

Retention period: 3 years after final payment under the contract.

1852.245-71 Contractors having contracts containing installation—provided Government property (March 1989) clause.

To maintain records of all items of installation—provided Government property including copies of all transaction documents used to describe changes to the record. The record and transaction documentation shall be maintained in such a condition that at any stage of completion of work under the contract, the status of the property including location, utilization, consumption rate, and identification can be readily ascertained.

Retention period: Not specified.

PANAMA CANAL COMMISSION

48 CFR

3552.236-76 Contractors subject to the accident prevention (Jan. 1990) contracts clause. [Added]

To maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment.

Retention period: Not specified.

3552.236-85 Contractors subject to the record drawings (Jan. 1990) contract clause. [Added]

During the process of the work, to keep a careful and current record, on a separate set of contract drawings, of all changes and corrections from the layouts shown on the drawings.

Retention period: Not specified.

TRANSPORTATION DEPARTMENT

Office of the Secretary

49 CFR

24.9 State and local agencies participating in the uniform relocation assistance and real property acquisition Federal and federally assisted programs.

To maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with applicable regulations.

Retention period: For at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled or in accordance with the applicable regulations of the Federal funding agency, whichever is later.

37.23 Public transit agencies providing transportation for individuals with disabilities. [Added]

To retain documentation of specific good faith efforts made when purchasing or leasing used vehicles that are not

readily accessible to and usable by individuals with disabilities.

Retention period: 2 years from the date the vehicles were purchased. Records shall be made available on request to the UMTA Administrator.

37.53 Public transit agencies providing transportation for individuals with disabilities. [Added]

To retain documentation of the specific good faith efforts made when purchasing or leasing used rapid or light red vehicles that are not readily accessible to and usable by individuals with disabilities.

Retention period: 2 years from the date the vehicles were purchased. Records shall be made available on request to UMTA Administrator.

37.83 Amtrak and commuter authorities providing transportation for individuals with disabilities. [Added]

To retain documentation of the specific good faith efforts made when purchasing or leasing used intercity or commuter rail cars that are not readily accessible to and usable by individuals with disabilities.

Retention period: 2 years from the date the cars were purchased. Records shall be made available on request to the UMTA or FRA Administrator, as applicable.

40.29 Drug testing laboratories.

To maintain all records pertaining to a given urine specimen. Such records shall include personnel files on all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records; performance testing; performance on certification inspection; and hard copies of computer-generated data.

Retention period: 2 years—may be extended upon written notification by a DOT agency or by any employer for which laboratory services are being provided. Documents for any specimen known to be under legal challenge shall be maintained for an indefinite period. Records shall be maintained in confidence.

Research and Special Programs Administration

49 CFR

107.504 Registrants engaging, manufacturing, assembling, certifying, inspecting or repairing cargo tanks or cargo tank motor vehicles.

To maintain a current copy of the registration information submitted to the

Department and a current copy of the registration number identification received from the Department.

Retention period: During such time the person is registered with the Department and for 2 years thereafter.

171.16 Motor carriers transporting hazardous materials.

To maintain a copy of the detailed hazardous materials incident reports.

Retention period: 2 years at the carriers' principal place of business, or at other places as authorized and approved in writing by an agency of the Department of Transportation.

172.602 Carriers transporting hazardous materials. [Added]

To maintain the basic description and technical name of the hazardous material as required by 49 CFR 172.202 and 172.203(k), the ICAO Technical Instructions, the IMDG Code, or the appropriate TDG Regulations, in the same manner as prescribed for shipping papers, except that the information must be maintained in the same manner aboard aircraft as the notification to pilot-in-command, and aboard vessels in the same manner as the dangerous cargo manifest. This information must be immediately accessible to train crew personnel, drivers of motor vehicles, flight crew members, and bridge personnel on vessels for use in the event of incidents involving hazardous materials.

172.606 Operators of facilities where hazardous materials are received, stored, or handled during transportation.

See 49 CFR 172.602.

173.163 Manufacturers of hydrogen fluoride (hydrofluoric acid, anhydrous) cylinders. [Added]

To maintain data sheet as prescribed by 49 CFR 173.34.

176.30 Carriers transporting or storing hazardous materials. [Added]

To maintain a copy of the dangerous cargo manifest, list, or storage plan.

Retention period: 1 year.

177.806 Shippers of hazardous materials offered by or consigned to the Department of Defense. [Added]

See 49 CFR 173.7.

177.814 Owners of cargo tank motor vehicles and motor carriers.

To maintain cargo tank motor vehicle manufacturer's certificate and other records.

Retention period: See 49 CFR 180.417.

177.816 Owners of motor vehicles transporting flammable cryogenic liquid in cargo tanks. [Added]

To maintain in the driver's qualification file, a record certifying that the current required training has been provided.

Retention period: As long as the driver is employed by the carrier and for 90 days thereafter.

178.320 Manufacturers of DOT specification cargo tank motor vehicles.

To retain the design certificate at principal place of business.

Retention period: As long as the manufacturer manufactures DOT specification cargo tanks.

178.601 Non-bulk packaging and package manufacturers. [Added]

(a) To keep records of design qualification tests, including specific types, dates, locations, packaging specifications, test specifics (drop heights, hydrostatic pressures, etc.), results, and test operators' names or name of person responsible for testing, for each packaging, at each location where that packaging is manufactured and at each location where design qualifications tests are conducted.

Retention period: As long as the packaging is produced and for at least two years thereafter.

(b) To keep records of periodic retests, including specific types, dates, location packaging specifications, test specific (drop heights, hydrostatic pressures, etc.), results, and test operators' name or name of person responsible for testing, at each location where that packaging is manufactured and at each location where periodic tests are conducted.

Retention period: Until such tests are successfully performed again and for at least two years from the date of each test.

Note: All records of design qualification tests and periodic retests must be made available for inspection by a representative of the Department upon request.

180.405 Owners of MC 331 cargo tanks.

To maintain at principal place of business a copy of the last exemption in effect that authorizes the transportation of ethane, refrigerated liquid, or ethane-propane mixture, refrigerated liquid, or hydrogen chloride, refrigerated liquid.

Retention period: During the period the cargo tank is in service.

180.405 Owners of DOT specification cargo tank motor vehicles.

To maintain the certificate that is withdrawn because the cargo tank is not

in conformance with the applicable specification requirements.

Retention period: At least 1 year after withdrawal of the certification.

180.409 Inspectors and testers. [Revised]

To maintain a copy of the tester's qualifications with the documents required by 49 CFR 180.417(b).

180.413 Owners of cargo tanks. [Amended]

To maintain at place of business all records of repairs or modifications made to each tank.

Retention period: During the time the tank is in service and for 1 year thereafter. Copies of these records may be retained by a motor carrier, who is not the owner, at principal place of business during the period the tanks are in the carrier service.

180.417 Owners and motor carriers of cargo tanks. [Amended]

To retain a copy of the test and inspection reports.

Retention period: Until the next test inspection of the same type is successfully completed.

180.417 Motor carriers using specification cargo tanks.

To retain the certificate that determines that the cargo tank conforms with the applicable specifications.

Retention period: As long as the cargo tank is used and for 1 year thereafter.

180.417 Owners of cargo tanks.

To maintain the manufacturer's data report or certificate and related papers certifying that the cargo tank identified in the documents was manufactured and tested in accordance with the applicable specification.

Retention period: Throughout ownership of the cargo tank and for 1 year thereafter. In the event of change of ownership, the prior owner shall retain non-fading photocopies of these documents for at least 1 year.

180.417 Motor carriers who are not owners of cargo tanks.

To retain a copy of the vehicle identification report at principal place of business.

Retention period: For as long as the cargo tank motor vehicle is used by that carrier and for 1 year.

198.39 States receiving full grant-in-aid for pipeline safety compliance program; one-call damage prevention program. [Added]

To maintain a record of each notice of intent to engage in an excavation activity for the minimum time set by the State or, in the absence of such time, for

the time specified in the applicable State statute of limitations on tort actions.

199.7 Operators of pipeline facilities, other than master meter systems, used for the transportation of natural gas or hazardous liquids and operators of liquefied natural gas (LNG) facilities.

To maintain and follow a written anti-drug plan that conforms to applicable requirements and the DOT Procedures.

Federal Railroad Administration

49 CFR

219.503 Railroad companies.

To retain record of pre-employment drug screening tests.

Retention period: 2 years from date of testing.

219.607 Railroad companies. [Removed, 1989; record retention requirements now in 219.713]

219.713 Railroad companies.

(a) To retain records of each test conducted that is reported as positive by the Medical Review Officer, including drug testing custody and control forms, laboratory reports, and certification statements.

Retention period: 2 years from date of sample collection; records of negative reports- 1 year.

(b) To maintain summary records of employee records of employee alcohol and drug test results conducted and rehabilitation (including primary treatment, aftercare, and follow-up alcohol/drug testing) for each covered employee.

Retention period: 5 years.

Note: Records required to be kept shall be made available to FRA as provided by section 208 of the Federal Railroad Safety Act of 1970.

225.27 Railroad companies. [Amended]

(a) To maintain logs, supplementary records, and annual summaries relating to railroad accidents.

Retention period: 5 years after end of calendar year to which they relate.

(b) To retain duplicates of all forms submitted to Federal Railroad Administration relating to railroad accidents.

Retention period: 2 years after end of calendar year to which they relate.

Federal Highway Administration

49 CFR

391.87 Motor carriers and persons operating commercial motor vehicles in interstate commerce. [Amended]

To maintain all records related to the administration and results of the drug testing program for its driver's subject to

the testing requirements, including information as specified in cited section.

Retention period: 5 years except records of individual negative test results-12 months.

391.103 Motor carriers and persons operating commercial interstate motor vehicles in interstate commerce. [Added]

To maintain in the driver's qualification files information on controlled substances testing.

Retention period: Not specified.

National Highway Traffic Safety Administration

49 CFR

580.8 Dealers, distributors, and lessors of motor vehicles subject to the Truth in Mileage Act of 1986.

(a) Dealers and distributors: To maintain a photostat, carbon, or other facsimile copy of each odometer mileage statement issued and received. To also retain a photostat, carbon, or other facsimile copy of each power of attorney that they receive.

(b) Dealers and distributors who are granted a power of attorney by their transferor: To retain all powers of attorney at their primary place of business in order that is appropriate to business requirements and that permits systematic retrieval.

Retention period: 5 years.

(c) Lessors: To retain each odometer disclosure statement which they receive from a lessee.

Retention period: 5 years following the date they transfer ownership of the leased vehicle.

586.6 Passenger car manufacturers. [Added]

To maintain records of Vehicle Identification Number for each passenger car for which information is reported under 49 CFR 586.5(b)(2).

Retention period: Until December 31, 1997.

592.6 Registered Importers of vehicles not originally manufactured to conform to the Federal Motor Vehicle Safety Standards.

To establish and maintain organized records, correspondence, and other documents relating to the importation, modification, and substantiation of certification of conformity to the Administrator.

Retention period: 8 years from the date of entry of any nonconforming vehicle for which it furnishes a certificate of conformity.

Urban Mass Transportation Administration**49 CFR****653.31 Recipients of Federal financial assistance from UMTA and operators for such recipients. [Suspended]**

To maintain all records related to the collection process and the reports of individuals not passing a drug test.

Retention period: 5 years.

Note: Part 653 was suspended until further notice at 55 FR 2526, Jan. 25, 1990.

INTERSTATE COMMERCE COMMISSION**49 CFR****1044.2 Motor carriers or brokers; filing a designation of process agent form. [Added]**

To retain one copy of Form BOC-3, Designation of Agent for Service of Process, at principal place of business.

1051.1 Motor carriers in interstate or foreign commerce. [Added]

To keep a copy of the receipt or bill of lading as prescribed in 49 CFR Part 1220.

1051.2 Motor carriers in interstate or foreign commerce. [Added]

To keep a copy of all expense bills issued for the period prescribed at 40 CFR Part 1220. If any expense bill is spoiled, voided, or unused for any reason, a copy or written record of its disposition shall be retained for a like period.

1152.32 Railroad companies.

To maintain records of the number of hours that each type of locomotive incurred in serving the segment during the subsidy period.

INTERIOR DEPARTMENT**Fish and Wildlife Service****50 CFR****21.12 State wildlife agencies, municipal parks, and public scientific or educational institutions possessing migratory birds.**

To maintain accurate records showing the numbers and kinds of such birds acquired, possessed, and disposed of; the names and addresses of persons from whom received or to whom delivered, and the dates of such transactions.

Retention period: 5 years following the end of the calendar year covered by the records.

21.27 Holders of special purpose permit issued for activities related to migratory birds, their parts, nests, or eggs.

To maintain adequate records describing the conduct of the permitted activity, the number and species of migratory birds acquired and disposed of under the permit, and inventorying and identifying all migratory birds held on December 31 of each calendar year. Records shall be maintained at the address listed on the permit; shall be in, or reproducible in English; and shall be available for inspection by Service personnel during regular business hours.

COMMERCE DEPARTMENT**National Oceanic and Atmospheric Administration****50 CFR****229.6 Exemption Certificate holders; commercial fishing operations.**

To maintain on board the fishing vessel, a daily log of fishing effort and incidental takes of marine mammals in such form as prescribed by the Assistant Administrator for Fisheries.

301.14 Operators of vessels five (5) net tons or greater engaged in halibut fishing.

To maintain an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and the total weight of halibut taken daily in each locality.

Retention period: 2 years.

301.15 Operators of vessels engaged in commercial fishing for halibut.

To maintain a record of each such purchase or receipt of halibut on State fish tickets or Canadian Federal catch report, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut when halibut are delivered to other than a commercial fish processor or primary fish buyer.

Retention period: 2 years from the date the fish tickets are made.

301.15 Persons purchasing or receiving halibut.

To maintain records of each such purchase or receipt on State fish tickets or Canadian Federal catch report, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

Retention period: 2 years from the date the fish tickets were made.

380.6 Operators of vessels having harvesting or individual permits to import Antarctic marine living resources into the United States.

To accurately maintain on board the vessel, a fishing logbook and all other reports and records requested by the permit.

Retention period: Not specified.

380.8 Owners and operators of harvesting vessel; Antarctic Marine Living Resources Convention Act of 1984.

To maintain all records and documents pertaining to the harvesting activities of the vessel, including but not limited to production records, fishing logs, navigation logs, transfer records, product receipts, cargo stowage plans or records, draft or displacement calculations, customs documents or records, and an accurate hold plan reflecting the current structure of the vessel's storage and factory spaces.

Retention period: Not specified.

630.5 Owners or operators of vessels of the United States who have been issued a permit to fish for or to land swordfish. [Revised]

To maintain daily fishing records on forms available from the Science and Research Director.

Retention period: Monthly.

651.5 Owners and operators of vessels and headboats fishing for or landing reef fish in the Gulf of Mexico EEZ or adjoining waters. [Added]

To maintain a fishing record for each trip or a portion of such trips, as specified by the Science and Research Director, on forms provided by the Science and Research Director.

652.5 Dealers who buy surf clams or ocean quahogs from Federally regulated vessels. [Revised; record retention requirements now in 652.6]**652.6 Dealers receiving surf claims and ocean quahogs for commercial purposes other than transport on land and who do not remove them from the cage. [Added]**

To maintain at principal place of business records on (a) date of purchase or receipt; (b) permit number and address; (c) number of bushels by species; (d) cage tag numbers; (e) allocation permit number; (f) vessel name and permit number; (g) price per bushel by species; and (h) disposition of surf claims or ocean quahogs including permit number of recipient.

Retention period: For one year from the date of entry.

652.6 Processors receiving surf claims or ocean quahogs for commercial purposes and remove them from the cage. [Added]

To maintain at principal place of business records containing the following information: (a) Date of purchased or receipt; (b) name, permit number, and mailing address; (c) number of bushels by species; (d) cage number; (e) allocation permit number; (f) price per bushel by species; (g) size distribution; and (h) meat yield per bushel by species.

Retention period: One year.

652.6 Vessel owners or operators conducting Atlantic surf claim and ocean quahog fishing operations, except those conducted exclusively in waters of a state requiring cage tags or when surrendering the Federal fishing vessel permit. [Added]

To maintain on board the vessel, an accurate daily fishing log for each fishing trip, on forms supplied by the Regional Director showing (a) name and permit number of the vessel; (b) total amount of bushels of each species

taken; (c) date(s) caught; (d) time at sea; (e) duration of fishing time; (f) locality fished; (g) crew size; (h) crew share by percentage; (i) landing port; (j) date sold; (k) price per bushel; (l) buyer; (m) tag numbers from cages used; (n) quantity of surf claims or ocean quahogs discarded; and (o) allocation permit number.

Retention period: For one year after the date of the last entry in the log.

672.5 Operators of domestic fishing vessels and managers of shoreside processing facilities.

To maintain timely and accurate records, reports, and logbooks in a legible manner and in English and based on Alaska Local Time (ALT).

Retention period: Original copy of all logbooks must be retained on board the vessel or within the processing facility until the end of the fishing year and for as long after the end of the fishing year as fish or fish products recorded in the logbook are retained on board that vessel or at the processing facility.

675.5 Operators of vessels and managers of shoreside processing facilities.

See 50 CFR 672.5

685.4 Operators of permitted harvesting vessels engaged in Western Pacific Region Pelagic Fisheries. [Added]

To maintain, on board the vessel, an accurate and complete daily fishing log for each entire fishing trip on forms supplied by the Regional Director. All information specified on the form must be recorded within 24 hours of the completion of the fishing day. The daily fishing log will include the following information: (a) Name of vessel; (b) permit number of vessel; (c) date, time, latitude and longitude of the location at which set and the hauling of the longline are begun; (d) number of hooks set; (e) number of lightsticks used; (f) number of fish and tuna by species caught and kept per day; and other such information as specified in section cited.

Retention period: 1 year.

BILLING CODE 1505-02-T

Registered Federal Land

Friday
March 8, 1991

Part III

Department of the Interior

Office of Surface Mining Reclamation and
Enforcement

30 CFR Parts 723 and 845
Surface Coal Mining and Reclamation
Operations; Initial Regulatory Program
and Permanent Regulatory Program; Civil
Penalty Assessment Conference
Procedures; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723 and 845

RIN 1029-AB22

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Civil Penalty Assessment Conference Procedures

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is revising its Initial and Permanent Regulatory Program regulations governing the assessment of civil penalties under section 518 of the Surface Mining Control and Reclamation Act of 1977 (the Act). The revision will extend by approximately 30 days the amount of time within which OSM may complete the necessary administrative actions to hold an assessment conference and by 15 days the amount of time within which a person charged with a violation may appeal an assessment conference officer's decision to the Office of Hearings and Appeals.

EFFECTIVE DATES: April 8, 1991.

FOR FURTHER INFORMATION CONTACT:

John A. Trelease, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240. Telephone: 202-208-2550 (Commercial) or 268-2550 (FTS).

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Discussion
- III. Procedural Matters

I. Background

Section 518 of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 et seq., authorizes the Secretary of the Interior to assess civil penalties for violations of the Act. 30 CFR 723.18 of the Initial Program regulations, first promulgated on December 13, 1977 (42 FR 62702), and subsequently revised on September 4, 1980 (45 FR 58780), and February 8, 1988 (53 FR 3664), and 30 CFR 845.18 of the Permanent Program regulations first promulgated on March 13, 1979 (44 FR 15461), and subsequently revised on August 16, 1982 (47 FR 35640), and February 8, 1988 (53 FR 3664), govern the procedures for an assessment conference. When a violation of the Act occurs and a person is served with a

notice of a proposed civil penalty assessment for the violation, the person may request an assessment conference during which OSM shall review the proposed assessment or reassessment and consider all relevant information on the violation and the amount of the penalty. At the conclusion of an assessment conference the proposed penalty assessment shall be affirmed, raised, lowered, or vacated by the assessment conference officer. Following the determination by the assessment conference officer, the person may pay the penalty in full or petition the DOI Office of Hearings and Appeals (OHA) for review of a civil penalty in accordance with 30 CFR 723.19 or 845.19. The amount equal to the reassessed or affirmed penalty must then be submitted to OHA (to be held in escrow) along with the petition for review. The proposed rule to revise 30 CFR 723.18(b) and 845.18(b) was published on April 4, 1990 (55 FR 12624). The comment period closed on May 21, 1990. One commenter responded. No request was received for a public hearing and none was held. OSM has adopted the revisions as proposed.

II. Discussion

A. Sections 723.18 and 845.18—Procedures for Assessment Conference

1. Description of Rules

The 1988 revisions to the Initial and Permanent Program regulations at 30 CFR 723.18(a) and 845.18(a) extended by approximately 18 days the time by which a person assessed a civil penalty may request an assessment conference. Specifically, the time was extended from "15 days from the date the proposed assessment or reassessment is mailed" to "30 days from the date the proposed assessment or reassessment is received." However, the regulations at 30 CFR 723.18(b) and 845.18(b), which required OSM to hold an assessment conference "within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later", were not altered. A consequential effect of the revisions to §§ 723.18(a) and 845.18(a) was that the amount of time available for OSM to acknowledge the request for a conference, conduct research in preparation for the conference, schedule the conference, and then hold the conference was reduced from approximately 45 days to less than 30 days. This reduction further compounded the difficulty already experienced by OSM of completing within its regulatory deadline all the steps necessary for holding assessment conferences. The preparatory steps

outlined above were discussed in detail in the proposed rule at 55 FR 12625.

Final §§ 723.18(b) and 845.18(b) should provide adequate time to complete these steps by extending the amount of time allowed to hold an assessment conference by approximately 30 days. The rules specify that the 60 day period within which the conference must be held will run "from the date the assessment conference request is received or the end of the abatement period, whichever is later" rather than from the date the assessment is issued.

Since the person requesting the assessment conference is not required to prepay any proposed civil penalty assessment when the conference is requested, the extension of time will not result in any economic hardship for the person requesting the conference and will allow him or her more time to prepare for the conference.

2. Public Comments Received

The one commenter to the current rulemaking voiced three concerns about the proposed and existing assessment conference rules at 30 CFR 723.18(b) and 845.18(b). The commenter's first concern was that the rules illegally expand the time frames of section 518(c) of the Act within which an operator charged with a violation of the Act must either pay the proposed amount in full or, if formally contesting the amount of the penalty or the fact of the violation, prepay the proposed amount into an escrow account with the Secretary. The commenter quoted that portion of section 518(c) which provides:

Upon the issuance of a notice or order charging that a violation of the Act has occurred, the Secretary shall inform the operator within *thirty days* of the proposed amount of said penalty. The person charged with the penalty shall then have *thirty days* to pay the proposed penalty in full or, if the person wishes to contest either the amount of the penalty or the fact of the violation, forward the proposed amount to the Secretary for placement in an escrow account . . .

(Emphasis added by commenter.)

The commenter cited to *Chevron, U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 842 (1984), and other authorities for the proposition that the plain meaning of section 518(c) precludes the assessment conference time frames specified at 30 CFR 723.18(b) and 845.18(b).

OSM disagrees with the commenter. The informal assessment procedures of 30 CFR 723.18 and 845.18, which have been in existence since 1977 and 1979, respectively, and the changes adopted

today are supported by section 518(c) and the Secretary's general rulemaking authority set forth in section 201(c)(2) of the Act, 30 U.S.C. 1211(c)(2).

Two 30-day periods are specified in section 518(c) of the Act. The first, the 30-day period between the issuance of a notice of violation or cessation order and the Secretary's notification of the person issued the notice or order of the proposed penalty amount, is directory and waivable by the person requesting the assessment conference, who is part of the class that the provision is aimed at protecting. This view is consistent with court holdings that the first time frame is not jurisdictional. These holdings were based on the fact that the first sentence of section 518(c) does not expressly specify a consequence for failure to comply with its terms. See *United States v. Log Mountain Mining Co.*, 550 F. Supp. 811 (E.D. Tenn. 1982), *aff'd. without opinion sub nom. United States v. Moore*, 734 F.2d 17 (6th Cir. 1984), *cert. denied*, 469 U.S. 881 (1984), and *United States v. Bolton*, 781 F.2d 528 (6th Cir. 1985).¹

When a person requests an assessment conference under the Secretary's rules, the provision in section 518(c) that the Secretary inform the operator of the amount of the proposed penalty is satisfied upon the assessment conference officer notifying the person assessed of his or her decision to affirm, raise, lower or vacate a penalty. This action provides the person who has been issued a notice of violation or cessation order with final notice of the proposed penalty. By requesting an assessment conference, the person has consented to notification of the proposed penalty amount subsequent to the assessment conference. In effect, such action constitutes a waiver of notification of the proposed penalty within 30 days of the issuance of a notice of violation or cessation order.

The theory that the service of notice of proposed assessment may constitute initial, but not necessarily final, notice is not new. It is already embodied, in part, in the provisions of 30 CFR 723.17(c), 723.19(a), 845.17(c), and 845.19(a) which recognize that, in certain circumstances, reassessment of the initial proposed penalty may occur, and that the period for seeking formal administrative review runs from such reassessment.

Since their adoption, the assessment conference procedures have added an increased element of fairness to the enforcement process by allowing the person who has been issued a notice of violation or cessation order to contest the amount of the proposed penalty prior to paying it in full or prepaying it into escrow and pursuing formal administrative review. The amendments adopted today further contribute to that fairness, without prejudice to any other person, including the commenter.

The assessment conference procedures have also contributed to upholding the constitutionality of the 518(c) prepayment provision in the face of challenges that it was violative of due process. *Graham v. Office of Surface Min. Reclam. & Enforc.*, 722 F.2d 1106 (3rd Cir. 1983), *Blackhawk Mining Co. v. Andrus*, 711 F.2d 753 (6th Cir. 1983), *B & M Coal Corp. v. Office of Surface Min. Reclam. & Enforc.*, 699 F.2d 381 (7th Cir. 1983). In upholding the prepayment provision, the courts took into account the statutory and administrative review procedures available to operators prior to prepayment of the proposed penalty.

The *Graham* Court noted that the basic foundation of due process is the opportunity to be heard "at a meaningful time and in a meaningful manner." *Graham*, 722 F.2d at 1111, citing *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 1191 (1965). Under the *Armstrong* standard, adequate time should be afforded both the operator and the conference officer to reasonably comply with each step of the assessment conference procedures outlined at 30 CFR 723.18 and 845.18. The preambles to the present and prior assessment conference rules provide extensive practical justification for the time frames allotted for each of these steps. The commenter's second concern was that the extensive practical justification provided by OSM over the years in support of the assessment conference time frames was "illusory". As its sole basis for this characterization, the commenter pointed to one of the several factors included in the preamble to the proposed rule for further extending the time within which a conference must be held. The commenter objected to that portion of the preamble which explained that:

Many times the operator is not prepared to present his evidence on short notice. Operators frequently request 2 weeks advance notice of the conference date since they may have attorneys or consultants who will attend.

(55 FR 12624, April 4, 1990.)

The commenter asserted that this justification for further extending the

time within which a conference must be held ignores the fact that the operator is on notice of the charge against him and that any "short notice" to the operator is solely the result of his own delay in waiting until the last minute to request a conference.

Again, OSM disagrees with the commenter. Once the request has been made and a tentative conference date been set by the conference officer, an operator needs time to prepare to present his evidence—preeminently by ensuring the attendance of his attorney or consultant. The preamble passage objected to by the commenter is consistent with scheduling difficulties that are typically encountered in firming up an assessment conference date. In addition to considerations of the operator's own availability, the schedules of attorneys and consultants who often represent other clients need to be considered. The amount of advance notice needed to ensure the attendance of all parties concerned is but one of the several factors which must legitimately be considered in prescribing reasonable assessment conference time frames. Under the final rule, extending the time within which a conference must be held to 60 days from the date the request is received allows proper case preparation and reasonable scheduling while continuing to assure the conferences will be held in an expeditious manner.

The commenter's third concern is that the assessment conference time frames at 30 CFR 723.18(b) and 845.18(b) allow an operator to delay the payments prescribed under section 518(c) and thereby lessen OSM's prospects for collection. In support of this proposition, the commenter stated that a 1984 House Report "found that delays throughout the process (from issuance of the notice of violation through formal administrative review) * * * had led to a low collection rate." H.R. Rep. No. 98-1146, 98th Cong., 1st Sess. 5-19 (1984).

The Committee was concerned about "inordinate delays" resulting primarily from the process extending for much longer periods than allowed by the assessment rules. The regulatory time frames do not cause such inordinate delays.

Although the government is concerned about the prompt payment and collection of penalties, a limited extension of the deadline for holding an assessment conference is unlikely to have any effect on the collectability of penalties. The Government must assure the adequacy of the procedural protection available to individuals prior to the deprivation of property. It must

¹ On the other hand, the statute does provide a consequence for failure to pay or contest the amount of the penalty in a timely manner and, therefore, this requirement is jurisdictional. The changes to 30 CFR §§ 723.19 and 845.19, described later in this preamble, are a recognition of the jurisdictional nature of this latter requirement.

weigh its interest in prompt payment and collection of penalties against the private interest involved and the risk of erroneous deprivation. *Graham*, 722 F.2d at 1111, citing *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 843 (1976). The *Graham* court considered each of these criteria in upholding the prepayment provisions of section 518(c) on the basis of the due process protection provided to the operator prior to prepayment. The time frames for informal review provided under the assessment conference procedures at 30 CFR 723.18(b) and 845.18(b) may therefore be seen as furthering, rather than thwarting, the purposes of section 518(c), as suggested by the commenter.

B. Sections 723.19(a) and 845.19(a)—Request for Hearing.

In response to the comment discussed earlier in this preamble concerning the consistency of the proposed amendments with the time frames of section 518(c) of the Act, OSM re-examined the assessment conference procedures in the context of the section 518(c) requirements. As a result of that comment and OSM's subsequent examination of the statute, OSM is amending 30 CFR 723.19(a) and 845.19(a) to extend the time for submitting a petition for a hearing and prepaying the proposed penalty into escrow from 15 days to 30 days.

As discussed earlier, in situations where an assessment conference is requested and held, the Secretary's final notification to the operator of the amount of the proposed penalty does not occur until service of the conference officer's decision either affirming or reassessing the penalty. Under section 518(c) of the Act, the person wishing to contest either the amount of the penalty or the fact of the violation has 30 days following notice of the proposed penalty amount to forward that amount to the Secretary for placement into escrow. Prior to today's amendments, however, §§ 723.19(a) and 845.19(a) provided that the person charged with the violation has only 15 days from the date of service of the conference officer's action to pay in full or seek formal administrative review.

Accordingly, the Secretary is revising §§ 723.19(a) and 845.19(a) to provide the full 30 days allowed by the statute. This change stems directly from the commenter's concern about the consistency of the Secretary's rules with the time frames set forth in the Act and OSM's subsequent recognition of the need to provide the full 30 days the statute allows to pay the penalty in full or to prepay the penalty amount into

escrow and to contest the penalty or violation.

Conforming changes to the OHA rules at 43 CFR 4.1151(b) will also be required to increase from 15 to 30 days the time frame within which a petition for review must be filed following service of notice by an assessment conference officer that the conference is deemed completed.

Effect of the Rule in Federal Program States and on Indian Lands

This rule will apply, through cross-referencing, to the following States with Federal programs: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The rule will also apply through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR part 750. No comments were received concerning unique conditions in any of these States or on Indian lands which would require changes to the national rules or as specific amendments to any or all of the Federal programs.

Effect of the Rule in States With Primacy

Section 518(i) of the Act and 30 CFR 840.13(c) of the regulations require approved State programs to contain civil penalty assessment procedures which are the same as or similar to the provisions of section 518 of the Act and consistent with those of 30 CFR part 845. The time allowed for holding an assessment conference is not prescribed in the Act; thus, the applicable standard governing the adequacy of State program provisions under 30 CFR 840.13(c) is whether the approved State programs contain procedural requirements relating to civil penalties which are consistent with (i.e., no less effective than) 30 CFR 845.18, as amended. Because OSM allows the States reasonable latitude in establishing certain procedural time frames, and because this rule merely extends one of such time frames, States do not have to adopt this change.

III. Procedural Matters.

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior has determined this document is not a major rule under E.O. 12291 and certifies this document will not have a significant economic impact on a substantial number of small entities under the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

OSM has prepared an environmental assessment, and has made a finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The environmental assessment is on file in the OSM Administrative Record at the address previously specified (see "ADDRESSES").

Author

The principal author of this rule is John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202-208-2550 (Commercial) or 208-2550 (FTS).

List of Subjects

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Accordingly, 30 CFR parts 723 and 845 are amended as follows:

Dated: January 22, 1991.

Dave O'Neal,

Assistant Secretary—Land and Minerals Management.

Subchapter B—Initial Program Regulations

PART 723—CIVIL PENALTIES

1. The authority citation for part 723 continues to read as follows:

Authority: Surface Mining Control and Reclamation Act of 1977, secs. 201, 501, 518 (30 U.S.C. 1211, 1251, 1268), unless otherwise noted; and Pub. L. 100-34.

2. Section 723.18(b)(1) is revised to read as follows:

§ 723.18 Procedures for assessment conferences.

* * * * *

(b)(1) The Office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by section 554 of title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later.

3. Section 723.19(a) is revised to read as follows:

§ 723.19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested, if it has been decided in a review proceeding

commenced under section 525 of the Act and 43 CFR part 4.

Subchapter L—Permanent Program Inspection and Enforcement Procedures

PART 845—CIVIL PENALTIES

1. The authority citation for part 845 continues to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*); and Pub. L. 100-34.

2. Section 845.18(b)(1) is revised to read as follows:

§ 845.18 Procedures for assessment conferences.

(b)(1) The Office shall assign a conference officer to hold the assessment conference. The assessment conference shall not be governed by section 554 of title 5 of the United States Code, regarding requirements for formal adjudicatory hearings. The assessment conference shall be held within 60 days from the date the conference request is received or the end of the abatement period, whichever is later: *Provided*, That a failure by the Office to hold such

conference within 60 days shall not be grounds for dismissal of all or part of an assessment unless the person against whom the proposed penalty has been assessed proves actual prejudice as a result of the delay.

3. Section 845.19(a) is revised to read as follows:

§ 845.19 Request for hearing.

(a) The person charged with the violation may contest the proposed penalty or the fact of the violation by submitting a petition and an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Office of Hearings and Appeals (to be held in escrow as provided in paragraph (b) of this section) within 30 days from receipt of the proposed assessment or reassessment or 30 days from the date of service of the conference officer's action, whichever is later. The fact of the violation may not be contested if it has been decided in a review proceeding commenced under 30 CFR 843.16.

[FR Doc. 91-5442 Filed 3-7-91; 8:45 am]

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Federal Register

Friday
March 8, 1991

Part IV

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 16

Health Warning Statement on Labels of Alcoholic Beverages; Request for Information; Notice of Request for Information

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 16

[Notice No. 713]

RIN 1512-AA82

Health Warning Statement on Labels of Alcoholic Beverages—Request for Information (88F406P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of request for information.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is issuing this notice to obtain information which will enable the agency to determine whether the wording of the alcohol health warning statement should be amended. This action is being taken by ATF in order to comply with section 206 of the Alcoholic Beverage Labeling Act of 1988 (ABLA) which requires the Secretary to report to Congress available scientific information which justifies a revision in the health warning statement, together with recommendations for such amendments to the law as he determines to be appropriate and in the public interest.

DATES: Information must be received on or before July 8, 1991.

ADDRESSES: Send information to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, ATTN: Notice No. _____.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202-566-7626).

SUPPLEMENTARY INFORMATION:**Background**

On February 14, 1990 ATF issued final regulations (T.D. ATF-294, 55 FR 5414) implementing the provisions of the Alcoholic Beverage Labeling Act of 1988, title VIII of the Anti-Drug Abuse Act of 1988 (enacted November 18, 1988). These regulations, which became effective on November 14, 1990, require that the following health warning statement appear on the labels of all containers of alcoholic beverages sold or distributed in the United States, as well as on

containers of alcoholic beverages that are sold, distributed, or shipped to members or units of the U.S. Armed Forces, including those located outside the United States:

GOVERNMENT WARNING: (1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. (2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems.

The health warning statement requirement applies to alcoholic beverages bottled on or after November 18, 1989.

The final rule was preceded by a notice of proposed rulemaking (Notice No. 678, February 16, 1989; 54 FR 7164), which solicited comments on the Bureau's temporary regulations (T.D. ATF-282, February 16, 1989; 54 FR 7160). The temporary regulations apply to products bottled between November 18, 1989, and November 13, 1990.

Report to Congress

As stated in section 206 of the ABLA, 27 U.S.C. 217:

If, after appropriate investigation and consultation with the Surgeon General carried out after the expiration of the 24-month period following the date of enactment of this title, the Secretary [of the Treasury] finds that available scientific information would justify a change in, addition to, or deletion of the [health warning] statement, or any part thereof, * * *. The Secretary shall promptly report such information to the Congress together with specific recommendations for such amendments to this title as the Secretary determines to be appropriate and in the public interest.

Prior to the issuance of the final rule on the health warning statement, ATF received correspondence from several industry members regarding section 206. These individuals requested that the Bureau withhold publication of final regulations until after the Secretary's report was submitted to Congress, in order to avoid possible additional costly label revisions. It was their understanding that section 206 required such report to be submitted to Congress no later than November 18, 1990, i.e., two years after the date of enactment of the ABLA.

However, the legislative history of the ABLA clearly shows that Congress intended that the Secretary's "investigation and consultation" should commence two years from the date of enactment. In that regard, the report of the Senate Committee on Commerce, Science, and Transportation on the

Alcoholic Beverage Labeling bill (S. 2047) stated:

If the Secretary determines, as a result of investigations and consultations beginning 2 years after the date of enactment of this title * * *, that available scientific information would justify a change in the label required by this title, the Secretary is to report that information to the Congress. [Emphasis added] S. Rep. No. 596, 100th Cong., 2d Sess. 8 (1988).

It is ATF's understanding that the National Institute on Alcohol Abuse and Alcoholism (NIAAA) has issued several grants to measure the impact of alcohol warning labels. This action was initiated by NIAAA in response to the law's requirement for "consultation with the Surgeon General."

Request for Information

In order to comply with section 206 of the ABLA, ATF is requesting scientific information, i.e., medical research, scientific studies, reports, consumer surveys, research literature, etc., that might justify a change in, addition to, or deletion of the health warning statement, or any part thereof. Information submitted should not be limited to that completed within the last few years. Although ATF believes that such information may be more valid, the agency is seeking any pertinent information on the subject.

The Bureau is also interested in studies that are currently in progress and, if available, any interim findings. The agency would also like to be apprised of any studies currently underway which may not be completed within the 120 day comment period, along with a projected target date for completion.

Scope of Comments

The Bureau requests that comments be limited to only the issue raised in this notice and that the information submitted include official documents, published reports, etc.

Drafting Information

The author of this document is James P. Ficaretta, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority: This notice is issued under the authority in 27 U.S.C. 215 and 217.

Approved: March 1, 1991.

Stephen E. Higgins,

Director.

[FR Doc. 91-5448 Filed 3-7-91; 8:45 am]

BILLING CODE 4810-31-M

Estimate Federal Tax

Friday
March 8, 1991

Part V

Department of Energy

10 CFR Part 710

**Personnel Security Assurance Program:
Determining Eligibility for Access to
Classified Matter or Significant Quantities
of Special Nuclear Material; Final Rule
and Proposed Rule**

DEPARTMENT OF ENERGY

10 CFR Part 710

Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material

AGENCY: Office of Safeguards and Security, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is issuing a final rule for the Personnel Security Assurance Program (PSAP). The PSAP is a special access authorization program for positions: (1) That afford direct access to Category I quantities of special nuclear material (SNM) or have direct responsibility for transportation or protection of Category I quantities of SNM, (2) that are identified as nuclear material production reactor operators, or (3) that have the potential for causing unacceptable damage to national security. The rule establishes the criteria for determining eligibility for this access authorization program, which consists of: (1) Supervisory review, (2) medical assessment, (3) management evaluation, and (4) security review and clearance determination. This access authorization, called a PSAP clearance, is a security review and determination and is conducted by DOE personnel security specialists. The intent of the PSAP is to establish a more comprehensive security evaluation of individuals applying for or occupying PSAP positions, on a more frequent basis, to determine whether they meet, or continue to meet, the criteria under subpart A, § 710.11 of this part.

EFFECTIVE DATE: April 8, 1991.

FOR FURTHER INFORMATION CONTACT: Lynn Gebrowsky, [Personnel Security Branch, Office of Safeguards and Security, Defense Programs, Department of Energy], (301) 353-3200, or Stephen P. Smith, [Office of the Assistant General Counsel for General Law, Office of the General Counsel, Department of Energy], (202) 586-8618.

SUPPLEMENTARY INFORMATION:**I. General**

A proposed rule to amend 10 CFR part 710 by adding a new subpart creating a Personnel Security Assurance Program was published in the *Federal Register* on February 2, 1989. Comments received in response to that publication are treated here. For more background information on PSAP, see 54 FR 5376 (February 2, 1989). This final rule is an addition to the current 10 CFR part 710.

In total, DOE received fifteen written communications containing comments on the proposed rule. The due date for comments was March 6, 1989. Some comments were received after that date. Although not obligated to do so, DOE is responding to all comments received because of the small number of comments and because the comments received after the due date were largely repetitive of those received on time.

Some of the comments expressed strong support for the concept of the PSAP, because of the overall goal of the program and because one of its elements complements a broader Federal effort to combat the use of illegal drugs. DOE gratefully acknowledges such expressions of support, but emphasizes that drug testing is only one element of this vital national security initiative.

In expressing support of the PSAP, some comments suggested that the drug testing measures of the program be extended to a larger population and that the program incorporate an outreach education effort for the community at large. A broadening of the PSAP to include all DOE and DOE contractor employees under the drug testing provisions is outside the scope of the program. The PSAP is directed at a specific target population, whose members are in positions to damage national security. The Federal and contractor drug-free workplace and substance abuse policies provide standards for drug testing of DOE and DOE contractor employees. The PSAP utilizes certain elements of the drug-free workplace and substance abuse policies, so as not to create separate, conflicting, or onerous requirements. The provision of a drug abuse education and outreach program to the community at large is outside the scope of the PSAP.

Other comments expressed support for the program, but urged that its implementation be delayed until further legal guidance could be obtained, particularly with regard to the drug-testing component of the program. Since the publication of the proposed rule, the Supreme Court of the United States, on March 21, 1989, rendered decisions in the cases of *National Treasury Employees Union v. Von Raab* (No. 86-1879;—U.S.—; 109 S.Ct. 1384; 103 L.Ed.2d 685) and *Skinner v. Railway Labor Executives' Association* (No. 87-1555;—U.S.—; 109 S.Ct. 1402; 103 L.Ed.2d 639). In those cases, the Supreme Court upheld drug-testing programs instituted, respectively, by the Customs Service for certain of its employees in designated sensitive positions and by the Department of Transportation for train crews. Although there are questions remaining to be

resolved in this area, it is clear from the current case law that drug-testing programs can be designed which do not infringe upon rights under the Fourth Amendment. DOE is confident that its drug-testing standards that are used in the PSAP meet the standards set thus far by the courts.

Another comment suggested that the goals of the PSAP could be met by increased physical security, designed to protect DOE installations and interests from outside threats. However, the purpose of PSAP is to counter threats that develop on the inside, within the outer security perimeter. These inside threats can be accidental and inadvertent or purposeful and intentional. A comparison of PSAP with DOE's other security measures will show that it is designed to complement, not duplicate, the other programs.

More specific and detailed comments are addressed below.

II. Comments Received and DOE Responses**A. Alcohol Standards**

Several comments raised concerns about the method by which the PSAP will deal with the issue of habitual and excessive use of alcohol. A common question asked was: "Who makes the diagnosis of use of alcohol habitually to excess?" This diagnosis can be made only by a medical professional, such as a psychiatrist or other physician. The determination of whether the diagnosis represents a security concern is made by representatives of DOE Security under subpart A, which also provides the individual the opportunity to present contrary evidence.

Some comments suggested that the program was too lenient, while others suggested that it was overly stringent. The Department's position regarding habitual use of alcohol to excess is based upon many years of experience gained through the administration of the provisions established by 10 CFR part 710. So long as an individual habitually uses alcohol to excess, that individual poses a threat to national security and will not be allowed to continue in a position involving PSAP duties. However, the Department accepts the medical profession's position that this is a condition which, with proper treatment combined with total abstinence, can reach a state of remission.

Remission involves much more than merely completing an initial counseling or treatment program; it must be evidenced by a minimum period of sobriety (usually at least one year) and

a medical determination. It is the position of the Department that once remission has been achieved, an individual is capable of returning to a sensitive position without adversely affecting national security. As required by the current 10 CFR part 710, as well as by this rule and other DOE directives, rehabilitation and reformation must be demonstrated; consequently, this rule makes provisions for continued monitoring even after remission has been medically determined to have taken place. It is the intent of the Department to provide each individual the maximum protection and consideration consistent with the safeguarding of vital national interests. Because this rule addresses both national security concerns and the needs of affected individuals, no revisions will be made to those portions of the rule pertaining to the use of alcohol habitually to excess.

B. Temporary Restrictions

Several questions were raised by comments concerning temporary restrictions: Particularly how and why they may be imposed, and who may impose and remove them. These questions appeared not to indicate changes in the proposed rule, but rather expressed a need to understand the policy and procedures prescribed by the rule. The following explanation is provided for that purpose.

The Department recognizes that some people experience conditions which may temporarily affect their judgment and reliability. Under these conditions individuals may find themselves unable to carry out the duties of a PSAP position. This rule provides procedures, as defined in § 710.58(g), to temporarily restrict their involvement in PSAP duties or to temporarily remove them from the PSAP position. There are a number of individuals who may make recommendations to impose temporary restrictions or to temporarily remove an individual from a PSAP position, including the affected individual, a site Occupational Medical Director, or others who may observe an incident or condition of concern. Temporary restrictions are actually imposed by supervisors or other management officials in the supervisory chain. Similarly, supervisory or managerial decision is required to rescind restrictions. The PSAP approving official is notified of all temporary restrictions. Reinstatement after removal from a PSAP position also requires concurrence by the DOE PSAP Approving Official.

C. Supervisory Conduct

Comments were received raising concerns that individuals in positions of authority, such as supervisors, medical directors, or managers might misuse their respective positions and the PSAP to harass a particular employee or group of employees. It is recognized that an individual in a position of authority might be able to misuse that authority. However, the PSAP does not convey to such people any powers they do not already possess. Corporate and government protective regulations are currently available which will keep in check those individuals who might otherwise abuse their positions. It is the position of the Department that no changes are needed in the rule to assure that all employees are afforded this protection.

A question was asked: "Who makes the determination that information concerning an employee in a PSAP position is a security concern?" Employees holding PSAP access authorizations should be knowledgeable of the type of information which represents a security concern, as defined in § 710.54. Information which may be a security concern will be reviewed and evaluated in accordance with current DOE policies and procedures by personnel assigned to the cognizant DOE personnel security function. If the information is determined to be substantially derogatory, it will be dealt with under the current provisions of 10 CFR part 710.

D. Drug-Related Issues

A request was made to include a list of the prescribed medications which might cause an employee in a PSAP position to have temporary or permanent restrictions imposed. Due to the continuously changing number of medications prescribed, it would be impossible to provide an accurate list of prescribed medications which might produce a side effect that would be a security concern. The site Occupational Medical Director is best qualified to review and make recommendations on a case-by-case basis.

As previously mentioned, the testing for use of illegal drugs engendered a variety of comments, some very supportive and others expressing concern. The intent of the PSAP is not to bar an individual forever from PSAP positions due to previous involvement with illegal drugs, but rather to identify illegal drug users and prevent their access to SNM. If an individual can demonstrate that he or she is no longer involved in any manner with illegal

drugs, and is able to meet the criteria provided under DOE regulations to establish eligibility for access authorization, that individual may gain or regain the PSAP access authorization.

A comment was received suggesting that the drug testing portion of the PSAP be placed under the direction of the site Occupational Medical Director. Following extensive Departmental review, the determination was made to place drug testing under the control of management. This was done to assure that medical organizations would have more latitude and freedom in performing their other duties, and could concentrate on clinical and scientific matters without being burdened by security responsibilities. Therefore no change will be made to the rule regarding programmatic control of the drug testing portion of the PSAP.

E. Definitions

Several comments requested definition of additional terms, among them "supervisor," "management official," "site Occupational Medical Director," and "selecting official." These terms have accordingly been added to the "Definitions" section. It was pointed out that the proposed rule did not make it clear that subcontractors were included in the PSAP. The final rule has been amended to remove this ambiguity, by the addition of a definition for "contractor" which includes "subcontractor" within its scope.

F. PSAP Positions

Several comments were submitted requesting further clarification of PSAP-designated positions in terms of the criteria for inclusion in and exclusion from the program. The position requirements for inclusion are stated in § 710.55 of this part. The first two categories are quite well-defined, the third being, of necessity, open-ended. Under this third category, persons who do not have responsibility for direct access, transportation, or protection of Category I quantities of special nuclear material (SNM), or who are not nuclear material production reactor operators, may be included in the PSAP if it is determined that their positions give them the potential to cause damage to national security. This group could include supervisors of employees in categories (1) and (2), if the supervisors were in a position to influence their employees to take improper actions, such as theft or diversion of SNM. If physical or administrative controls can be established to ensure that an individual cannot have or obtain direct access to SNM, that position (whether in

category (1), (2), or (3)) may be excluded from the PSAP. All positions identified for inclusion in the PSAP, and the justifications thereof, must be submitted in writing in a PSAP implementation plan, for approval by the cognizant Operations Office Manager.

G. Contractor Functions

One comment proposed a section be added to the rule that expressly provides contractor personnel performing discretionary, as opposed to ministerial, functions, as required by today's rule, "are performing DOE functions." We consider it neither necessary nor appropriate to add such a provision to the rule. It is the Department's view that the PSAP functions performed by contractor personnel, like other contractual requirements, are governed by the terms of the contract and applicable law.

Another comment questioned the applicability of the Privacy Act of 1974 to the records required to be maintained by today's rule. It is the Department's view that contractors who participate in the PSAP are subject to the provisions of the Privacy Act to the extent they maintain systems of records established pursuant to the Privacy Act for the Department. The determination of whether PSAP records are subject to the Privacy Act will be based upon the terms of each contract.

III. Changes From Proposed Rule

Certain changes have been made to the proposed rule of February 2, 1989, in response to comments from within the Department of Energy. Most of these comments are of a nonsubstantive nature, to include corrections for spelling and grammar and minor rewriting for clarification and correctness of expression. Those changes which were of a substantive nature are enumerated below.

In § 710.57(a), and in all other appropriate instances, the term "applicant" has been amended to "applicant tentatively selected for PSAP position" or a suitable variation thereof. It is not intended that the full measures of the Personnel Security Assurance Program (PSAP) be applied to individuals in the very preliminary stages of application to a PSAP position.

In § 710.57(d), a sentence has been added to outline procedures to be utilized for the reassignment from PSAP duties of a Federal employee.

In § 710.57(e), the phrase " * * * to be a user * * *" has been changed to " * * * to have used * * *." It is not necessary to establish a pattern of drug use, as might be implied by the former phrase. The sole determination involved

is the use of illegal drugs in any manner, as confirmed by the positive results of a drug test.

The last phrase of § 710.57(g) of the proposed rule was omitted from this final rule as giving overly specific procedural instructions. It is not the intent of this rule to set local administrative procedures.

In § 710.58(e), the phrase "unusual conduct" has been altered to read "observed unusual conduct." The supervisor of a PSAP-cleared individual is not expected to analyze or diagnose unusual behavior. The intent of the rule is that the supervisor observe and recognize such behavior and refer the individual to the site Occupational Medical Director. Training in the observation and recognition of unusual conduct will be provided to supervisors of PSAP-cleared individuals.

In § 710.58(h), the word "approval" was changed to "recommendation" in the last sentence to clarify the fact that the site Occupational Medical Director is not the approving official for a return to PSAP duties of a PSAP-cleared individual. The site Occupational Medical Director offers a recommendation to the appropriate management official, who makes the determination of a return to PSAP duties.

The format of § 710.59(b) was revised for clarity. It also adds the fact that the unannounced drug test is to be conducted annually and defines the affected population.

Section 710.59(c) has been added to expand upon the sentence in § 710.59(b) concerning testing for cause or reasonable suspicion.

In § 710.59(c), and in all other instances, the term "DOE Drug-Free Workplace and Substance Abuse Programs" has been changed to "DOE drug-free workplace and substance abuse policies." This was done to avoid the implication that there exists a specific DOE program with the title "DOE Drug-Free Workplace and Substance Abuse Program." The revised wording is intended to indicate that the Personnel Security Assurance Program will be consistent with those applicable DOE policies which are currently in effect at any given time.

Section 710.59(e) has been renumbered and a final phrase has been added to emphasize that contractor policy may exceed the requirements of this subpart, but may not be less stringent than those requirements.

Subsections of § 710.60 have been reordered for logical flow. In § 710.60(c), the identification of the referenced background investigation has been revised to conform with standard usage.

In § 710.60(d) the listing of the annual checks required by the PSAP has been revised for clarity. The segment describing periodic reinvestigations under the PSAP has been extracted and moved to § 710.60(e). The phrase "any necessary adjudication" has been added to the sentence concerning the annual review, as adjudication would only be required in the case of derogatory information. Section 710.60(e) is a new subsection, extracted from § 710.60(d). The identification of the type of background investigation has been revised to conform with standard usage.

A final sentence was added to § 710.60(f) to acknowledge the fact that an administrative review may result from the circumstances mentioned in the first sentence of this subsection, or may arise from other causes. Any administrative review of a PSAP-cleared individual is conducted in accordance with the provisions of subpart A of 10 CFR part 710.

IV. Procedural Requirements

A. Executive Order 12291

Under Executive Order 12291, agencies are required to determine whether rules to be issued are major rules as defined in the Order. DOE has reviewed this rule and has determined that it is not a major rule because implementing the additional security requirements proposed in this rule: (1) Will not have an annual effect on the economy of \$100 million or more; (2) will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (3) will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

Pursuant to the Executive Order 12291, this notice was submitted to the Director of the Office of Management and Budget, who has concluded his review.

B. Regulatory Flexibility Act

In accordance with section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., DOE finds that section 603 and 604 of the said Act do not apply to this rule because, if promulgated, the rule will affect only DOE contractors operating Government-owned facilities, their subcontractors, and selected DOE Federal operations, and will not affect small entities.

C. National Environmental Policy Act

There is no impact on the environment under today's rule. It is a personnel security clearance effort and deals only with a determination to grant, deny, or suspend a PSAP access authorization. Accordingly, preparation of neither an environmental assessment nor an environmental impact statement is required.

D. Paperwork Reduction Act

Today's rule imposes no additional paperwork burden on the public other than that already approved under OMB Control Number 1910-1800.

E. Federalism Effects

The principal impacts of today's rule will be on DOE employees and contractors who participate in the Department's national security and defense efforts. The rule is unlikely to have a substantial direct effect on the States, the relationship between the States and Federal government, or the distribution of power and responsibilities among various levels of government.

List of Subjects in 10 CFR Part 710

Access authorization, suspension, revocation, administrative practice and procedure, classified information, Government contracts, Government employees, nuclear materials access, security measures, Personnel Security Assurance Program (PSAP), PSAP position, Category I Quantities of Special Nuclear Material, PSAP access authorization.

Issued in Washington, DC, on November 21, 1990.

John C. Tuck,
Under Secretary.

In consideration of the foregoing, part 710 of Title 10 of the Code of Federal Regulations is amended as set forth below.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 710 continues to read as follows:

Authority: Sec. 145, 68 Stat. 942, as amended (42 U.S.C. 2165); sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); E.O. 10450, 3 CFR 1949-1953 Comp., p. 836, as amended; E.O. 10865, 3 CFR 1959-1963 Comp., p. 398, as amended, 3 CFR Chap. IV; sec. 104(c), 36 Stat. 1237 (42 U.S.C. 5814); sec. 105(a) 88 Stat. 1238 (42 U.S.C. 5815)

2. Sections 710.1 through 710.39 are designated as:

Subpart A—General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material

§§ 710.1-710.39 [Amended]

3. In §§ 710.1-710.39, remove the word "part" in each instance where it refers to the current part and add, in its place, the word "subpart."

Appendix A [Amended]

4. Redesignate the title of "Appendix A" as "Appendix A to subpart A."

5. Subpart B, consisting of §§ 710.50 to 710.60, is added to read as follows:

Subpart B—Criteria and Procedure for Establishment of the Personnel Security Assurance Program and Determinations of an Individual's Eligibility for Access to a Personnel Security Assurance Program Position

General Provisions

Sec.	
710.50	Purpose.
710.51	Scope.
710.52	References.
710.53	Policy.
710.54	Definitions.

Procedures

Sec.	
710.55	Designations of PSAP positions.
710.56	Program process.
710.57	Supervisory review.
710.58	Medical assessment.
710.59	Management evaluation.
710.60	DOE security review and clearance determination.

Subpart B—Criteria and Procedures for Establishment of the Personnel Security Assurance Program and Determinations of an Individual's Eligibility for Access to a Personnel Security Assurance Program Position

General Provisions

§ 710.50 Purpose.

(a) This subpart establishes the policies and procedures for implementing the Department of Energy (DOE) Personnel Security Assurance Program (PSAP) for individuals in positions.

(1) Which afford direct access to or have direct responsibility for transportation or protection of Category I quantities of special nuclear materials (SNM).

(2) Which are identified as nuclear material production reactor operators, or

(3) With the potential for causing unacceptable damage to national security.

(b) The DOE Personnel Security Assurance Program is designed to establish the procedures for DOE and DOE contractors to utilize in the selection and continuing evaluation of individuals for assignment to positions described by paragraph (a) of this section. Individuals selected for assignment to such positions must be granted access authorization in accordance with the procedures and requirements set forth in subparts A and B of this part.

§ 710.51 Scope.

The criteria and procedures establishing the Personnel Security Assurance Program shall apply to:

(a) Those employees of, and applicants for employment with, DOE who either occupy or make application for PSAP positions, as described by paragraph (a) of § 710.50.

(b) Those employees of, and applicants for employment with, contractors and agents of the DOE who either occupy or make application for PSAP positions, as described by paragraph (a) of § 710.50.

§ 710.52 References.

(a) Atomic Energy Act of 1954, as amended, section 11, "Definitions"; section 141, "Policy"; section 143, "Department of Defense Participation"; section 145, "Restrictions"; section 161 b., "General Provisions"; which provide statutory authority for establishing and implementing a DOE security program for controlling access to Restricted Data and special nuclear material. Copies of selected provisions appear as appendix A to subpart A of this part.

(b) Executive Orders 10450, April 29, 1953, "Security Requirements for Government Employment," 10865, February 20, 1960, "Safeguarding Classified Information Within Industry," and 12564, September 15, 1986, "Drug-Free Federal Workplace," all as amended.

(c) "Department of Health and Human Services' Mandatory Guidelines for Federal Workplace Drug Testing Programs," of April 11, 1988, which contains requirements for conducting drug testing, is available from U.S. Department of Energy, Public Reading Room, 1000 Independence Avenue, Washington, DC 20585.

(d) Implementing directives (DOE Orders) which provide Departmental guidance on the PSAP and related areas are available from the U.S. Department

of Energy, Washington, DC 20585,
Attention: Directives Distribution.

§ 710.53 Policy.

The protection of certain of the DOE's security interests, with the potential, if compromised, of causing unacceptable damage to the national security, requires the implementation of a program designed to assure that individuals occupying positions affording access to certain material, facilities, and programs meet the highest standards of reliability. This objective is accomplished under this subpart through a system of continuous evaluation which identifies those individuals whose judgment may be impaired by physical and/or emotional disorders, the use of controlled substances, or the use of alcohol habitually to excess. This process will reduce the potential risk of harm represented by such employees. The determination to grant initially and to continue annually the access authorization to a PSAP position is based upon a DOE security assessment of any information of security concern developed in the course of an initial and annual security review process.

§ 710.54 Definitions.

As used in this part:

Contractor means the contractor and subcontractors at all tiers.

Direct Access means access to Category I quantities of SNM which would permit an individual to remove or misuse that material in spite of any controls that have been established to prevent such unauthorized actions.

Illegal Drugs means a controlled substance included in Schedules I, II, III, IV, or V, as defined by 21 U.S.C. 802(6), the possession of which is unlawful under chapter 13 of that title. The term "illegal drugs" does not apply to the use of a controlled substance in accordance with the terms of a valid prescription, or other uses authorized by law.

Management Official means an individual designated by the DOE or a DOE contractor, as appropriate, who has programmatic responsibility for PSAP positions.

Nuclear Material Production Reactor Operator means an individual certified by DOE contractor management to operate (manipulate the controls of) a DOE-owned nuclear material production reactor.

PSAP Approving Official means a senior DOE official with direct personnel security responsibilities appointed by an operations office manager to review all relevant information, including DOE F 5631.35, "PSAP Management, Medical, and Security Report" as part of the DOE

security review process, and who is responsible for granting or continuing the PSAP access authorization, or determining that an individual be processed under the provisions of subpart A of this part.

PSAP Position means a position that affords direct access to or has direct responsibility for transportation or protection of Category I quantities of SNM, nuclear material production reactor operators, or with the potential to cause unacceptable damage to national security.

Security Concern means the presence of information, regarding an individual applying for or holding a PSAP position, that may be considered derogatory under the criteria in Subpart A of this part.

Selecting Official means the management official responsible for making the final employment decision regarding an individual seeking a PSAP position.

Site Occupational Medical Director means a physician responsible for the overall direction and operation of the occupational medical program at a particular site.

Supervisor means an individual who has direct oversight and responsibility for a person holding a PSAP position.

Unacceptable Damage means an incident that could result in a nuclear explosive detonation, a major environmental release from a nuclear material production reactor, or an interruption of nuclear weapons production with a significant impact on national security.

Procedures

§ 710.55 Designation of PSAP positions.

PSAP positions shall be designated by the cognizant Operations Office Manager in accordance with the following criteria:

(a) Positions that afford direct access to Category I quantities of SNM or have direct responsibility for transportation or protection of Category I quantities of SNM.

(b) Positions that are identified as nuclear material production reactor operators.

(c) Positions with the potential for causing unacceptable damage to national security which are not included in paragraph (a) or (b) of this section, and are designated by the Director, Office of Safeguards and Security, DOE.

§ 710.56 Program process.

(a) Individuals selected for assignment to PSAP positions must be granted a PSAP access authorization in accordance with the procedures and requirements set forth in this subpart.

(b) The PSAP involves four (4) components: Supervisory review; medical assessment; management evaluation; and security determination. A DOE determination to grant initially and to continue annually an individual's PSAP access authorization is based upon a DOE security assessment of any information of security concern developed in the course of the supervisory review, medical assessment, management evaluation, and security review.

(c) DOE shall make its decision as to a PSAP access authorization in accordance with the criteria in § 710.11 of subpart A.

§ 710.57 Supervisory review.

(a) The supervisory review shall be performed on all applicants tentatively selected for PSAP positions, transferees to PSAP positions, individuals occupying PSAP positions but not yet holding a PSAP access authorization, and PSAP-cleared employees.

(b) The initial SF-86, OMB Control No. 3206.007, "Questionnaire for Sensitive Positions" of an applicant tentatively selected for a PSAP position and an annual update of the "Questionnaire for Sensitive Positions," including a completed part II, of each incumbent in a PSAP position shall be completed and forwarded to the appropriate PSAP Approving Official.

(c) Before being selected for a PSAP position, any tentatively selected applicant must undergo a thorough pre-employment check covering the past 10 years, which includes validation of the applicant's educational history; verification of the applicant's employment record; a credit check; a local agency criminal records check in the appropriate localities, as permitted by State or local law; and contact with all references.

(d) Each applicant tentatively selected for a PSAP position and each individual occupying a PSAP position but not yet holding a PSAP access authorization shall execute the appropriate PSAP releases, acknowledgements, and waivers. The request for a PSAP access authorization shall not be further processed until these documents are completed. Failure of an individual, occupying a PSAP position but not yet holding a PSAP access authorization, to complete these documents shall result in reassignment from PSAP duties. An effort shall be made to reassign that individual to a position not requiring a PSAP access authorization.

For purposes of this subsection and all subsequent provisions of this rule that relate to reassignment from PSAP

duties, any Federal employee will be immediately removed from PSAP duties. The affected employee's supervisor may reassign the employee or realign the employee's current duties. If these actions are not feasible, the supervisor must contact the appropriate servicing personnel office for guidance.

(e) Applicants tentatively selected for PSAP positions and each individual occupying a PSAP position, but not yet holding a PSAP access authorization, shall undergo testing for the use of illegal drugs in accordance with the provisions established by the Department of Health and Human Services in "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (April 11, 1988). A determination of the use of illegal drugs, based on a drug test, shall result in termination of consideration for the PSAP access authorization. An employee who has been determined to have used illegal drugs, based on a drug test, shall be immediately reassigned from the PSAP duties and processed under the provisions of subpart A of this part.

(f) The supervisor (or selecting official) shall report any security concerns, resulting from his or her review, to the appropriate management official.

(g) Annual Review. Each PSAP-cleared employee shall have an annual PSAP review conducted by the supervisor during which the supervisor shall evaluate information relevant to security. The supervisor shall report any security concerns, resulting from his or her review, to the appropriate management official.

(h) Recognition of Security Concerns and Unusual Conduct. In order to facilitate early recognition of an individual who represents a possible security concern, individuals who, in the judgment of the responsible supervisor, exhibit unusual conduct shall be referred to the site Occupational Medical Director, who may arrange for the PSAP-cleared employee to be examined by the appropriate medical staff. Information indicating a possible security concern shall be reported immediately to the appropriate management official and PSAP Approving Official.

(i) Temporary Reassignment to non-PSAP Duties. Where an individual has demonstrated a possible security concern or a condition which may temporarily affect his or her reliability, the individual, with the recommendation of the site Occupational Medical Director or the PSAP Approving Official, may be temporarily reassigned to non-PSAP duties. In the event that a PSAP-

cleared employee is temporarily reassigned to non-PSAP duties, the supervisor, jointly with the site Occupational Medical Director and/or the PSAP Approving Official, as appropriate, may determine the temporary restrictions to be placed on the employee. The PSAP Approving Official shall be notified immediately upon the decision to temporarily reassign the employee to non-PSAP duties and the reason for such action, and upon the decision to reinstate such employee. If the reason for the temporary reassignment was based upon a security concern, the PSAP Approving Official must approve the request for reinstatement.

§ 710.58 Medical assessment.

(a) The Medical Examination. The purpose of the PSAP medical examination is to ensure that an applicant tentatively selected for, or incumbent in, a PSAP position does not represent a security concern or have a condition which may prevent the individual from performing PSAP duties in a reliable and safe manner. The examination shall include an evaluation to determine the presence of any physical or mental condition that causes or may cause a significant defect in the judgment or reliability of the individual, including that which may result from the use of illegal drugs or the use of alcohol habitually to excess.

(b) When Performed. The medical assessment is performed initially upon applicants tentatively selected for PSAP positions and employees occupying PSAP positions who have not yet received a PSAP access authorization. The medical assessment shall be performed annually, or more often as may be required by the site Occupational Medical Director, for PSAP-cleared employees.

(c) Contents of Medical Assessment. The medical assessment shall include: A comprehensive medical examination; an examination for use of alcohol habitually to excess; a psychological assessment and/or psychiatric evaluation as provided for in any applicable DOE medical standards, and as permitted by Federal regulations; and an examination for the cause of any reported unusual conduct.

(d) Examination for Use of Alcohol Habitually to Excess. The use of alcohol habitually to excess represents a potential threat to national security and is inconsistent with access to a PSAP position. Accordingly, the medical assessment shall include:

(1) Diagnosis. Employees in, or applicants tentatively selected for, a PSAP position shall be examined for the

use of alcohol habitually to excess. Those employees diagnosed currently to use alcohol habitually to excess shall be temporarily reassigned to non-PSAP duties and the PSAP Approving Official shall be notified immediately. A determination of the abuse of alcohol by an applicant tentatively selected for a PSAP position shall result in termination of consideration of the PSAP access authorization.

(2) Rehabilitation. Individuals reinstated to PSAP duties following treatment leading to rehabilitation from the use of alcohol habitually to excess shall be required to undergo evaluation as prescribed by the site Occupational Medical Director to ensure continued rehabilitation. Such evaluation shall be consistent with appropriate Departmental substance abuse programs.

(e) Examination for the Cause of Reported Unusual Conduct. Upon referral of a PSAP-cleared employee by a supervisor for observed unusual conduct, the site Occupational Medical Director may arrange for the employee to be examined by appropriate specialists.

(f) Report of Occupational Medical Director. Upon completion of the medical assessment, the site Occupational Medical Director shall report any security concerns resulting from the medical assessment to the appropriate management official.

(g) Temporary Restrictions on a PSAP Position. In the event that a condition or circumstance develops that may affect the judgment or reliability of a PSAP-cleared employee, the site Occupational Medical Director may recommend restrictions. The site Occupational Medical Director shall report these restrictions immediately, in writing, to the appropriate management official who shall immediately notify the appropriate PSAP Approving Official. Removal of restrictions requires notification in writing to both the management official and the PSAP Approving Official by the site Occupational Medical Director.

(h) Sick Leave From a PSAP Position. PSAP-cleared employees who have been on sick leave for five (5) or more consecutive work days are required to report in person to the site Occupational Medical Director before being allowed to return to normal duties. The site Occupational Medical Director shall provide a recommendation to the appropriate management official regarding the employee's return to work. A PSAP-cleared employee may in certain circumstances also be required to report to the site Occupational

Medical Director for written recommendation to return to normal duties after any period of sick leave.

§ 710.59 Management evaluation.

(a) Evaluation Components. A management evaluation based upon a careful review of the results of the supervisory review, medical assessment, and drug testing of an individual in, or an applicant tentatively selected for, a PSAP position is required before that individual can be considered for an initial or the continuance of a PSAP access authorization. The appropriate manager of an organization having PSAP positions (management official) shall evaluate the information in these reports and forward his or her recommendation, including any security concern, to the PSAP Approving Official.

(b) Drug Testing Component. Drug testing for the use of illegal drugs, as required by the PSAP, shall be established to test all individuals in, or applicants tentatively selected for, PSAP positions. Testing shall be conducted in accordance with the "Mandatory Guidelines for Federal Workplace Drug Testing Programs," published by the Department of Health and Human Services (April 11, 1988). The program shall include unannounced annual drug testing and testing for occurrence or reasonable suspicion for all PSAP-cleared individuals. A PSAP-cleared individual who has been determined to have used illegal drugs based on a drug test shall be reassigned immediately to non-PSAP duties, and the PSAP Approving Official shall be notified immediately.

(c) Occurrence or Reasonable Suspicion Testing Component. When a PSAP-cleared employee is involved in or associated with an occurrence requiring notification to the DOE or whose behavior creates the basis for a reasonable suspicion of substance abuse, the employee shall be tested for the use of illegal drugs. Drug testing shall be conducted in accordance with

the provisions of the DOE drug-free workplace and substance abuse policies, and the "Mandatory Guidelines for Federal Workplace Drug Testing Programs," published by the Department of Health and Human Services (April 11, 1988).

(d) Rehabilitation. Individuals reinstated to PSAP duties following treatment leading to rehabilitation from the use of illegal drugs shall be required to undergo evaluation and testing as prescribed in DOE drug-free workplace and substance abuse policies and by the site Occupational Medical Director or other designated official, as appropriate, in order to ensure continued rehabilitation.

(e) Corporate Policy. Nothing in this subpart is intended to interfere with or prohibit a contractor of the Department from conducting medical and other evaluations, including testing for the use of illegal drugs as a matter of corporate policy, so long as such policy is at least as effective as the requirements and procedures of this subpart.

§ 710.60 DOE security review and clearance determination.

(a) When Performed. The final component of the PSAP process is a security review and clearance determination performed by the PSAP Approving Official upon receipt of the management evaluation and recommendation.

(b) The Criteria. The PSAP access authorization and adjudication shall be conducted in accordance with the criteria and procedures contained in relevant sections of this part.

(c) Review for Initial PSAP Access Authorization. An initial PSAP access authorization requires a special background investigation (15-year scope) completed within the last five (5) years. The adjudication and determination for a PSAP access authorization shall be based upon a review of security information, including the results of the background investigation and the information

provided by management and medical sources.

(d) Annual PSAP Access Authorization Continuance. Once an employee has received the PSAP access authorization, he or she shall thereafter undergo an annual security evaluation by the PSAP Approving Official. The evaluation shall include a National Agency Check, with credit check, a local criminal records check, where available, and a review of the individual's DOE personnel security file, to include the review of an updated SF-86, OMB Control No. 3206-007, "Questionnaire for Sensitive Positions," including completed part II. The determination to continue the PSAP access authorization shall be based upon a review and any necessary adjudication of the information resulting from the annual security evaluation, and the information provided by management and medical sources, in accordance with the criteria and procedures contained in relevant sections of this part.

(e) Periodic Reinvestigation. The PSAP-cleared employee shall undergo a limited background investigation (5-year scope) at least every five (5) years. The determination to continue the PSAP access authorization shall be based upon a review of security information, including the results of the limited background investigation and the information provided by management and medical sources.

(f) Processing Under 10 CFR part 710, subpart A. Any matters of security concern raised to the attention of the PSAP Approving Official, such as confirmed use of illegal drugs or use of alcohol habitually to excess, shall be evaluated in accordance with the criteria under subpart A, § 710.11 of this part. Any administrative review under the PSAP shall be conducted in accordance with the provisions and procedures in subpart A.

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DEPARTMENT OF ENERGY

10 CFR Part 710

Personnel Security Assurance
Program: Substance Abuse Testing
Procedures

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy (DOE) has established the Personnel Security Assurance Program (PSAP) through the publication of the revision to 10 CFR part 710, (published elsewhere in this issue of the *Federal Register*), "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material." The PSAP was created in order to assure the reliability of individuals in certain positions, defined in § 710.50(a), and referred to as PSAP positions for purposes of this proposed rule. The Department now proposes to amend this rule to include a provision for testing for alcohol use in cases of occurrence or reasonable suspicion and to promulgate guidelines for DOE contractors for testing for possible use of illegal drugs and abuse of alcohol by their PSAP-cleared employees. These guidelines will constitute a baseline PSAP substance abuse testing component.

DATES: Written comments (six copies) must be received by April 8, 1991.

ADDRESSES: Written comments (six copies) are to be submitted to Director, Office of Safeguards and Security, DP-34, Department of Energy, Germantown, room E-369, Washington, DC 20545, (301) 353-5106.

FOR FURTHER INFORMATION CONTACT: Lynn Gebrowsky, Personnel Security Branch, DP-345.2, (301) 353-3200 or Stephen P. Smith, Office of the Assistant General Counsel for General Law, Office of the General Counsel, Department of Energy, (202) 586-8618.

SUPPLEMENTARY INFORMATION:**I. Introduction****A. Reason for Amendment**

In the notice of proposed rulemaking for the Personnel Security Assurance

Program (54 FR 5376, February 2, 1989), the Department of Energy indicated that the procedural standards for carrying out drug testing under the PSAP would be taken from the "Contractor Drug-Free Workplace Program". However, in the ensuing months, the contractor substance abuse program has undergone certain shifts of emphasis and an expansion of scope, resulting in delay in the program's publication for public comment. In order to allow the full implementation of PSAP sooner than would be possible if the PSAP were to be tied to the contractor substance abuse program, these amendments were developed to permit full and unimpeded implementation of the PSAP. Additionally, these amendments will make reference to the Contractor Workplace Substance Abuse Program unnecessary and thus result in a convenience to the persons subject to this regulation.

B. Scope of Testing

The Department of Energy today proposes guidelines for the testing by contractors of PSAP-cleared individuals and tentatively selected applicants to PSAP positions for the use of illegal drugs. Such individuals will be subject to testing in the following circumstances: for applicants tentatively selected for PSAP positions, a test for use of illegal drugs will be accomplished prior to a final determination to place the individual in a PSAP position; for employees holding PSAP positions, testing for use of illegal drugs will be conducted annually on a random basis. Testing for use of illegal drugs or the abuse of alcohol will be conducted in the case of an "occurrence", as defined in § 710.54(m), and on the basis of "reasonable suspicion." Testing in cases of reasonable suspicion would be based on the determination of the need for such testing by two supervisory or management officials, one of whom is in the employee's supervisory chain or is the site Occupational Medical Director. Reasonable suspicion could result from direct observation of drug or alcohol use, erratic behavior, arrest or conviction for an illegal drug offense, or reliable information received from a credible source.

C. Testing for Illegal Drugs

Testing for use of illegal drugs will involve analysis of urine samples, and contractors will have to use chain of custody procedures for maintaining control and accountability from point of collection to final disposition. Testing will have to comply with the "Mandatory Guidelines for Federal Workplace Drug Testing Programs," issued by the Department of Health and Human Services (HHS), 53 FR 11970, April 11, 1988, and subsequent amendments thereto. Procedures used in the Department's Federal Drug-Free Workplace Plan may provide guidance in the preparation of contractor programs. Copies are available from the Director, Personnel Policies and Programs Division, Office of Personnel, U.S. Department of Energy, Washington, DC 20585. Each contractor will have to provide for use of testing laboratories certified by HHS under subpart C of the HHS Guidelines. Information concerning the current certification status of laboratories is available from the Office of Workplace Initiatives, National Institute on Drug Abuse, 5600 Fishers Lane, Rockville, MD 20857.

D. Testing for Alcohol

Today's proposed amendments, regarding testing for the abuse of alcohol, provide only for "occurrence" and "reasonable suspicion" testing for excessive blood alcohol for individuals in PSAP positions. At the present time, the Department is not proposing random testing for alcohol abuse. The Department intends to study further the advisability of such testing.

The rule for alcohol abuse provides for testing by an evidential-grade breath alcohol analysis device to determine blood alcohol content. The testing procedure provides for testing of at least one breath sample. In cases in which a blood alcohol concentration of .04 per cent or greater is indicated, the proposed amendments would require confirmatory testing, or an actual blood test at the request of the employee being tested. In establishing this minimum cutoff level, the Department has relied on C. Moore, et al., "Use of a 0.04% BAC Cutoff Level for Alcohol Testing," In *Fitness for Duty in the Nuclear Power Industry: A Review of Technical Issues*,

NUREG/CR-5227, Supplement 1 (Washington, DC, U.S. Nuclear Regulatory Commission, 1989). This document is available for review in the Department's reading rooms in the Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 and the National Atomic Museum, Albuquerque, NM 87115. It should also be noted that the testing procedure is drawn directly from the Nuclear Regulatory Commission's Fitness-for-Duty Programs rule, 54 FR 24468, of June 7, 1989.

E. Medical Review of Test Results

The contractor Personnel Security Assurance Programs would have to provide for review of test results by a "Medical Review Officer." That term is defined to mean a licensed physician approved by the Department, who receives laboratory results and evaluates those results in light of an employee's medical history and any other relevant biomedical information.

The Medical Review Officer determines whether the employee has used illegal drugs or abused alcohol. Such a determination, with respect to illegal drugs, would have to be made in accordance with the criteria in the Medical Review Officer Manual, issued by HHS (DHHS Publication No. (ADM) 88-1526). A determination, with respect to alcohol, would have to be made in accordance with the provisions of § 710.59(e)(2).

II. Review Under Executive Order 12291

Under Executive Order 12291, agencies are required to determine whether or not proposed rules are major rules as defined in the Order. DOE has reviewed this proposed rule and has determined that it is not a major rule because: Implementing the additional human reliability requirements proposed in this rule will not have an annual effect of \$100 million or more on the economy; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. The proposal was submitted to the Director of the Office of Management and Budget pursuant to Executive Order 12291.

III. Review Under the Regulatory Flexibility Act

The proposed rule was reviewed under the Regulatory Flexibility Act, 5

U.S.C. 601 *et seq.* DOE has concluded that there is no need to prepare a regulatory flexibility analysis because, if promulgated, the rule will affect only DOE contractors whose places of performance are at Government-owned or leased sites and their subcontractors, and will not have significant economic impact on a substantial number of small entities.

IV. Review Under the National Environmental Policy Act

There is no impact on the environment under this proposed rule; accordingly, neither an environmental assessment nor an environmental impact statement is required.

V. Review Under Executive Order 12612

The principal impact of this rule will be on government contractors and their employees. The rule is unlikely to have a substantial direct effect on the States, the relationship between the States and the Federal government, or the distribution of power and responsibilities among various levels of government. No Federalism assessment under E.O. 12612 is required.

VI. Review Under the Paperwork Reduction Act

The proposed rule imposes no additional paperwork burden on the public other than that already approved under OMB Control Number 1910-0600.

VII. Opportunity for Public Comment

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed rule set forth in this notice. Comments (six copies) should be submitted to the address for the Director of the Office of Safeguards and Security which is given in the beginning of this notice. All comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action on the proposed final regulatory amendments.

Any person submitting information which that person believes to be confidential and which may be exempt by law from public disclosure should submit one complete copy, as well as six copies from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. This procedure is set forth in 10 CFR 1004.11.

Because of the limited scope and effect of the PSAP and these amendments to it, DOE expects that

there will be few comments received. Accordingly, no public hearings have been scheduled. However, if the comments received indicate a sufficient level of public interest, one or more hearings may be set at which interested persons may present their views orally. Such hearings will be announced by a notice in a future issue of the Federal Register.

List of Subjects in 10 CFR Part 710

Alcohol, Drug testing, Energy, National security, Reasonable suspicion, Special Nuclear Material, Substance abuse.

Issued in Washington, DC, on November 21, 1990.

John C. Tuck,
Under Secretary.

In consideration of the foregoing, part 710 of title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 710—CRITERIA AND PROCEDURES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED MATTER OR SIGNIFICANT QUANTITIES OF SPECIAL NUCLEAR MATERIAL

1. The authority citation for part 710 is revised to read as follows:

Authority: Atomic Energy Act of 1954, as amended, sec. 145, 68 Stat. 942 (42 U.S.C. 2165) and sec. 161, 68 Stat. 948 (42 U.S.C. 2201); E.O. 10450, 3 CFR 1949-1953 Comp., p. 836, as amended; E.O. 10865, 3 CFR 1959-1963 Comp., p. 398, as amended, 3 CFR chap. IV; sec. 104(c), 36 Stat. 1237 (42 U.S.C. 5814); sec. 105(a), 88 Stat. 1238 (42 U.S.C. 5815); Department of Energy Organization Act, sec. 641, 644, 646, 91 Stat. 598, 599 (42 U.S.C. sections 7251, 7254, and 7256).

§ 710.50 [Amended]

2. In § 710.50, paragraph (b) is revised to read as follows:

(b) The DOE Personnel Security Assurance Program is designed to establish the procedures for DOE contractors to utilize in the selection and continuing evaluation of individuals for assignment to positions described by paragraph (a) of this section, to include procedural guidance for testing for use of illegal drugs and abuse of alcohol. Individuals selected for assignment to such positions must be granted access authorization in accordance with the procedures and requirements set forth in subparts A and B of this part. Selection and evaluation procedures for DOE personnel assigned to Personnel Security Assurance Program positions shall be consistent with DOE substance abuse policies and programs.

3. Section 710.53 is revised to read as follows:

§ 710.53 Policy.

The protection of certain of the DOE's security interests, with the potential, if compromised, of causing unacceptable damage to the national security, requires the implementation of a program designed to assure that individuals occupying positions affording access to certain material, facilities, and programs meet the highest standards of reliability. This objective is accomplished under this subpart through a system of continuous evaluation which identifies those individuals whose judgment may be impaired by physical and/or emotional disorders, substance abuse, or the use of alcohol habitually to excess. This process will reduce the risk resulting from the potential threat represented by such employees to an acceptable level. The determination to grant initially and to continue annually the access authorization to a PSAP position is based upon a DOE security assessment of any information of security concern developed in the course of an initial and annual security review process.

§ 710.54 [Amended]

4. The following definitions are added in alphabetical order to § 710.54 to read as follows:

Blood Alcohol Concentration (BAC) is a measure of the mass of alcohol in a volume of blood, which can be measured directly from blood or derived from the concentration of alcohol in a breath specimen. It is expressed as a decimal fraction. For example, an individual with 100 mg of alcohol per 100 ml of blood has a BAC of 0.10 per cent; 40 mg of alcohol per 100 ml of blood will yield a BAC of 0.04.

Collection site person means a technician or other person trained and qualified to take urine, blood, or breath samples and to secure urine and blood samples for later laboratory analysis.

Confirmed positive test means a finding based on a positive initial or screening test result, confirmed by another positive test on the same sample for drug tests and another sample for alcohol tests. At present, for drugs, the confirmatory test must be by the gas chromatography/mass spectrometry method.

Drug certification means a written assurance signed by an individual stating that the individual will refrain from using or being involved with illegal drugs while employed in a position requiring DOE access authorization (security clearance).

Evidential-grade breath alcohol analysis device means a device which conforms to the model standards for evidential breath testing devices of the National Highway Traffic Safety Administration (49 FR 48855, December 14, 1984).

Medical Review Officer (MRO) means a licensed physician approved by the Office of Health, Assistant Secretary for Environment, Safety and Health, and acceptable to the field manager or facility manager. The MRO is responsible for receiving laboratory results generated by an employer's drug testing program, has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's positive test result, together with that person's medical history and any other relevant biomedical information. For purposes of this part a physician from the site occupational medical department may be the MRO.

Occurrence means any deviation from the planned or expected course of events in connection with any Department of Energy or Department of Energy-controlled operation, if the deviation has potential environmental, public health and safety, or national security protection significance. Incidents having such significance include the following, or incidents of a similar nature:

(1) Any injury or fatality involving a Department of Energy or Department of Energy contractor employee due to an incident associated with a Department of Energy or Department of Energy contractor operation.

(2) Any incident involving a nuclear explosive under Department of Energy jurisdiction which results in an explosion, fire, the spread of radioactive material, personal injury or death, or damage to personal property.

(3) Any accidental release of pollutants which result or could result in significant effect on the public or environment.

(4) Any accidental release of radioactive material.

Random Testing means the unscheduled, unannounced urine drug testing of randomly selected employees in PSAP positions, by a process designed to ensure that selections are made in a non-discriminatory manner.

Reasonable suspicion means a suspicion based on an articulable belief that an employee uses illegal drugs or abuses alcohol, drawn from particularized facts and reasonable inferences from those facts, as detailed further in § 710.59(c).

Special Nuclear Material has the same meaning as in section 11.aa. of the

Atomic Energy Act of 1954. (42 U.S.C. 2014).

Substance abuse means any use of illegal drugs or the abuse of alcohol. For the purpose of this part, an individual who engages in the abuse of alcohol refers to an individual in a PSAP position who enters or remains on a site owned or controlled by DOE, with a blood alcohol content of .04 or greater.

§ 710.59 [Amended]

5. Section 710.59 is amended by redesignating paragraphs (d) and (e) as (g) and (h) and revising newly designated paragraph (9); by adding new paragraphs (d), (e), and (f); and by revising paragraphs (b) and (c) to read as follows:

(b) Drug Testing Component. Drug testing for the use of illegal drugs, as required by the PSAP, shall be established to test all individuals in, or applicants tentatively selected for, PSAP positions. Testing shall be conducted in accordance with § 710.59(d) of this part. The program shall include unannounced annual drug testing, and testing as a result of an occurrence or for reasonable suspicion, for all PSAP-cleared individuals. All employees in PSAP positions must be tested on a random basis. The randomness of the testing must be of such a nature as to preclude prior knowledge of the test on the part of the employee being tested. Those employees who have not undergone a random test for a given year at the time of that year's medical examination will be tested for the use of illegal drugs during the medical examination. A PSAP-cleared individual who has been determined to have used illegal drugs based on a drug test shall be reassigned immediately to non-PSAP duties, and the PSAP Approving Official shall be notified immediately.

(c) Occurrence or Reasonable Suspicion Testing Component. When a PSAP-cleared employee is involved in or associated with an occurrence requiring notification to the DOE or whose behavior creates the basis for a reasonable suspicion of substance abuse, the employee shall be tested for the use of alcohol and illegal drugs. Refusal of the employee to undergo testing may result in removal from PSAP duties and revocation of access authorization.

(1) For an occurrence requiring immediate notification or reporting, the contractor must require testing as soon as possible after the occurrence but within 24 hours. For other occurrences requiring notification to DOE, the contractor may require testing.

(2) When the behavior of an employee in a PSAP position creates the basis for reasonable suspicion of the use of illegal drugs or the abuse of alcohol, that employee must be tested for the use of illegal drugs or the abuse of alcohol if two or more supervisory or management officials, at least one of whom is in the direct chain of supervision of the employee or is the site Occupational Medical Director, agree that such testing is appropriate. Reasonable suspicion must be based on an articulable belief that an employee used illegal drugs or abuses alcohol, drawn from particularized facts and reasonable inferences from those facts. Such a belief may be based upon, among other things:

(i) Observable phenomena, such as direct observation of;

(A) The use of illegal drugs or alcohol;

(B) The physical symptoms of being under the influence of illegal drugs or alcohol;

(C) The use of alcohol incident to entering or remaining at a site owned or controlled by DOE;

(ii) A pattern of abnormal conduct or erratic behavior;

(iii) Arrest or conviction for a drug- or alcohol-related offense;

(iv) Information that is either provided by a reliable and credible source or is independently corroborated; or

(v) Evidence that an employee has tampered with a drug or alcohol test.

(d) Drugs for which Testing is Performed. Testing routinely must be performed to identify the use of the following drugs or classes of drugs:

(1) Marijuana;

(2) Cocaine;

(3) Opiates;

(4) Phencyclidine; and

(5) Amphetamines.

Testing may be performed for additional drugs or classes of drugs if deemed necessary by the contractor. When testing is based on occurrence or reasonable suspicion, contractors may test for any illegal drug, as well as alcohol.

(e) Specimen collection, Handling, and Laboratory Analysis. (1) Procedures for providing urine specimens must allow individual privacy, unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. Contractors shall utilize chain of custody procedures for maintaining control and accountability from point of collection to final disposition of specimens, and testing laboratories shall use appropriate cutoff levels in screening specimens to determine whether they are negative or positive for a specific drug, consistent with the "Mandatory

Guidelines for Federal Workplace Drug Testing Programs," issued by the Department of Health and Human Services, April 11, 1988, and subsequent amendments thereto. The contractor shall ensure that only testing laboratories certified by the Department of Health and Human Services, under subpart C of the Mandatory Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies" are utilized.

(2) Alcohol breath test shall be delayed at least 15 minutes if any source of mouth alcohol (e.g., breath fresheners) is present or any other substances have been ingested (e.g., through eating, drinking, or smoking) or regurgitated. The collection site person shall ensure that each breath specimen taken comes from the end, rather than the beginning, of the breath expiration. For each screening test, two breath specimens from a single machine shall be collected from each individual. The specimens shall be taken no less than two and no more than 10 minutes apart. The test results shall be considered accurate if each measurement is within plus or minus 10 percent of the average of the two measurements. If the test results are not accurate, an additional breath test shall be conducted on another evidential-grade breath analysis device. Positive results shall be confirmed by a second test performed on the same device. If the alcohol breath tests indicate that the individual is positive for a Blood Alcohol Concentration at or above the designated cutoff level, the individual may request a confirmatory blood test, at the individual's discretion.

Contractors must employ at least a 0.04 percent BAC cutoff level. All vacuum tube and needle assemblies used for blood collection shall be factory-sterilized. The collection site person shall ensure that they remain properly sealed until used. Antiseptic swabbing of the skin shall be performed with a nonethanol antiseptic. Sterile procedures shall be followed when drawing blood and transferring the blood to a storage container; in addition, the container must be sterile and sealed.

(3) If the individual refuses to cooperate with the urine collection or breath analysis process (e.g., refusal to provide a specimen, or to complete paperwork), then the collection site person shall inform the Medical Review Officer (MRO) and shall document the non-cooperation in the permanent record book and on the specimen custody and control form. The MRO shall report the failure to cooperate to the appropriate management official. Individuals so failing to cooperate shall

be treated in all respects as if they had been tested and had been determined to have used an illegal drug or to have abused alcohol. The provision of a blood specimen for use to confirm a positive breath test for alcohol shall be entirely voluntary, at the individual's discretion. In the absence of a voluntary blood test, the second positive breath test shall be considered a confirmed positive.

(4) The collection site person shall ascertain that there is a sufficient amount of urine to conduct an initial test, a confirmatory test, and a retest. In accordance with the mandatory guidelines published by HHS, this amount will be considered to be at least 60 milliliters. If there is not at least 60 milliliters of urine, additional urine will be collected in a separate container. The individual may be given reasonable amounts of liquid and may be given a reasonable amount of time in which to provide the specimen required. The individual and the collection site person must keep the specimen in view at all times. When collection is complete, the partial specimens will be combined in a single container. In the event that the individual fails to provide 60 milliliters of urine, the amount will be noted on the specimen custody and control form. In this case, the collection site person will notify the individual's supervisor who will, in consultation with the appropriate management official, determine the next action. This may include deciding to return the individual to PSAP duties and to reschedule the individual for testing, or to temporarily reassign the individual until a further determination can be made.

(f) Medical Review of Results of Tests for Substance Abuse. (1) Only confirmed positive tests shall be submitted for medical review by the MRO. A confirmed positive test means a finding based on a positive initial or screening test result, confirmed by another positive test on the same sample.

(i) For drugs, a confirmed positive test shall consist of an initial test performed by the immunoassay method, with positive results on that initial test confirmed by another test, performed by the gas chromatography/mass spectrometry method ("GC/MS"). This procedure is described in paragraphs 2.4 (e) and (f) of the Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs, April 11, 1988.

(ii) For alcohol, the initial test shall be performed on an evidential-grade breath alcohol analysis device in the manner prescribed in this part, and positive results shall be confirmed by a second test, unless the individual requests a

confirmatory blood test for alcohol. Each evidential-grade breath alcohol analysis device used in this program shall conform to the standards of the National Highway Traffic Safety Administration (NHTSA) and to any applicable State standards.

(2) The medical review must consider the medical history of the employee or applicant, as well as any other relevant biomedical information. If the MRO determines that there is a legitimate medical explanation for the confirmed positive test result, consistent with legal and non-abusive drug and alcohol use,

the MRO must certify that the test results do not meet the conditions for a determination of substance abuse. If no such certification can be made, the MRO must make a determination of substance abuse. Determinations of substance abuse must be made in accordance with the criteria provided in the Medical Review Officer Manual issued by the Department of Health and Human Services [DHHS Publication No. (ADM) 88-1526].

(g) Rehabilitation. Individuals reinstated to PSAP duties following treatment leading to rehabilitation from

alcohol abuse or the use of illegal drugs must undergo evaluation and testing as prescribed by the site Occupational Medical Director or other designated official, as appropriate, and may be subject to unannounced drug and/or alcohol testing, at intervals, for a period of 12 months in order to ensure continued rehabilitation.

* * * * *

[FR Doc. 91-5450 Filed 3-7-91; 8:45 am]

BILLING CODE 8450-01-M

The American Medical Association is a non-profit corporation organized for the purpose of promoting the interests of the medical profession and the public. It was organized in 1847 and has since that time been the leading organization of the medical profession in the United States. The Association is composed of more than 50,000 members, who are organized into local, state, and national societies. The Association's principal activities are the publication of the Journal of the American Medical Association, the holding of annual conventions, and the representation of the medical profession in legislative and executive bodies. The Association is also engaged in a wide variety of other activities, including the promotion of medical research, the improvement of medical education, and the advancement of the public health.

The Journal of the American Medical Association is a weekly publication which contains a wide variety of material of interest to the medical profession. It includes original articles, reviews, and reports on the latest developments in medicine. The Journal is also a forum for the expression of views on medical and public health issues. The Journal is published by the American Medical Association, which is a non-profit corporation organized for the purpose of promoting the interests of the medical profession and the public. The Journal is one of the most important and influential medical journals in the world.

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Federal Register

Friday
March 8, 1991

Part VI

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

**OFFICE OF MANAGEMENT AND
BUDGET****Budget Rescissions and Deferrals****TO THE CONGRESS OF THE UNITED
STATES:**

In accordance with the Impoundment Control Act of 1974, I herewith report 26 proposed rescissions, totaling \$4.3 billion, and one revised deferral and one new deferral of budget authority. Including the revised and new deferrals, funds withheld in FY 1991 now total \$9.3 billion.

The deferrals affect International Security Assistance programs and the Department of Agriculture. The proposed rescissions affect the Departments of Agriculture, Defense, and Housing and Urban Development.

The details of the proposed rescissions and deferrals are contained in the attached report.

Dated: February 28, 1991.

George Bush,
The White House.

BILLING CODE 3195-01-M

CONTENTS OF SPECIAL MESSAGE

(in thousands of dollars)

RESCISSION NO.	ITEM	BUDGET AUTHORITY
	Department of Agriculture:	
	Soil Conservation Service:	
R91-1	Watershed and flood prevention operations.....	10,000
	Department of Defense, Military:	
	Procurement:	
R91-2	Procurement of weapons and tracked combat vehicles, Army.....	86,000
R91-3	Procurement of ammunition, Army.....	13,000
R91-4	Aircraft procurement, Navy.....	1,093,500
R91-5	Weapons procurement, Navy.....	2,600
R91-6	Shipbuilding and conversion, Navy.....	405,000
R91-7	Other procurement, Navy.....	10,000
R91-8	Procurement, Marine Corps.....	2,000
R91-9	Aircraft procurement, Air Force.....	14,200
R91-10	Missile procurement, Air Force.....	74,700
R91-11	Other procurement, Air Force.....	254,200
R91-12	Procurement, Defense agencies.....	65,303
R91-13	National guard and reserve equipment.....	289,900
	Research, Development, Test, and Evaluation:	
R91-14	Research, development, test, and evaluation, Army.....	60,800
R91-15	Research, development, test, and evaluation, Navy.....	834,500
R91-16	Research, development, test, and evaluation, Air Force.....	134,100
R91-17	Research, development, test, and evaluation, Defense agencies.....	29,300
	Military Construction:	
R91-18	Military construction, Navy.....	48,962
R91-19	Military construction, Air Force.....	91,800

CONTENTS OF SPECIAL MESSAGE (in thousands of dollars)

RESCISSION		BUDGET
NO.	ITEM	AUTHORITY

Department of Housing and Urban Development:

Housing Programs:

	Annual contributions for assisted	
R91-20	housing.....	500,000
R91-21	Congregate services program.....	9,500
R91-22	Nehemiah housing opportunity grants.....	39,112

Community Planning and Development:

R91-23	Urban development action grants.....	13,518
R91-24	Rental rehabilitation grants.....	70,000
R91-25	Urban homesteading.....	13,397
R91-26	Rehabilitation loan fund.....	144,459

Total rescissions.....	4,309,851
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DEFERRAL		BUDGET
NO.	ITEM	AUTHORITY

Funds Appropriated to the President:

International Security Service:

D91-1B	Economic support fund.....	2,093,659
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Department of Agriculture:

Forest Service:

D91-10	Timber salvage sales.....	103,684
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Total deferrals.....	2,197,343
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R91-1

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Watershed and flood prevention operations

Of the funds made available under this head in Public Law 101-506, \$10,000,000 are rescinded.

Rescission Proposal No. R91-1

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Agriculture	New budget authority.....\$ <u>185,705,000</u>
BUREAU: Soil Conservation Service	(P.L. 101-506) Other budgetary resources... <u>65,527,301</u>
Appropriation title and symbol: Watershed and flood prevention operations 12X1072	Total budgetary resources... <u>251,232,301</u>
	Amount proposed for rescission.....\$ <u>10,000,000</u>
OMB identification code: 12-1072-0-1-301	Legal authority (in addition to sec. 1012):
Grant program: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other
Type of account or fund: <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year _____ (expiration date) <input checked="" type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other

JUSTIFICATION: This program provides for cooperation between the Federal Government and States and their political subdivisions in installing works of improvement to reduce damage from floodwater, sediment and erosion; for the conservation, development, utilization, and disposal of water; and for the conservation and proper utilization of land. This rescission is proposed to assist in achieving the 1992 budget proposal to reduce the Federal assistance in controlling soil erosion work under Public Law 566.

ESTIMATED PROGRAM EFFECT: Approximately 10 watershed structures for which funding is being terminated were to have been completed in one year but will now be postponed.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
204,973	197,173	-7,800	-2,200	---	---	---	---

R91-2

Department of Defense - Military
Procurement

Procurement of weapons and tracked combat vehicles, Army

Of the funds made available under this head in Public Law 101-511, \$77,000,000 are rescinded, and of the funds made available under this head in Public Law 101-165, \$9,000,000 are rescinded.

Rescission Proposal No. R91-2

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... \$ 2,171,237,000 (P.L. 101-511)
BUREAU: Procurement	Other budgetary resources... 1,809,920,511
Appropriation title and symbol: Procurement of weapons and tracked combat vehicles, Army 211/32033 210/22033	Total budgetary resources... 3,981,157,511
OMB identification code: 21-2033-0-1-051	Amount proposed for rescission..... \$ 86,000,000
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Legal authority (in addition to sec. 1012): <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year Sept. 30, 1992 Sept. 30, 1993 (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: This appropriation provides for procurement and modification of weapons and tracked combat vehicles, equipment, including ordnance, spare parts, and specialized equipment and training devices. The rescission includes \$64 million which would have been used to convert existing M-1 tanks to the M-1A1 configuration. The Army has no program plan for such an upgrade in view of the fact that the preferred tank is the Block III variant currently in development. In addition, \$13 million of M-1 funds are excess to program requirements. Also, \$9 million (FY 1990) for Bradley modifications are excess to program requirements.

ESTIMATED PROGRAM EFFECT: The Department of the Army's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
1,093,819	1,092,099	-1,720	-35,690	-31,820	-9,030	-4,558	-2,322

Department of Defense - Military

Procurement

Procurement of ammunition, Army

Of the funds made available under this head in Public Law 101-
511, \$13,000,000 are rescinded.

Procurement of ammunition, Army

funds made available under this head in Public Law 101-
3,000,000 are rescinded.

Rescission Proposal No. R91-3

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... \$ <u>1,367,181,000</u>
BUREAU: Procurement	(P.L. 101-511) Other budgetary resources... <u>40,800,000</u>
Appropriation title and symbol: Procurement of ammunition, Army 211/32034	Total budgetary resources... <u>1,407,981,000</u>
	Amount proposed for rescission..... \$ <u>13,000,000</u>
OMB identification code: 21-2034-0-1-051	Legal authority (in addition to sec. 1012): <input type="checkbox"/> Antideficiency Act
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year <u>Sept. 30, 1993</u> (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: This appropriation provides for the procurement and modification of ammunition. The Congress added \$13.0 million to continue design of an HMX explosive production facility at Longhorn Army Ammunition Plant. This rescission is proposed because a new \$500 million facility at Longhorn is not required by our mobilization plans. The existing facility at the Holsten Army Ammunition Plant has adequate production capacity.

ESTIMATED PROGRAM EFFECT: The Department of Army's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
513,425	508,134	-5,291	-741	-5,148	+1,560	-2,600	-633

R91-4

Department of Defense - Military
Procurement

Aircraft procurement, Navy

Of the funds made available under this head in Public Law 101-165, \$893,500,000 are rescinded, and of the funds appropriated under this head in Public Law 100-463, \$200,000,000 are rescinded.

Rescission Proposal No. R91-4

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority.....
BUREAU: Procurement	Other budgetary resources... \$ 3,215,111,975
Appropriation title and symbol: Aircraft procurement, Navy 170/21506 179/11506	Total budgetary resources... \$ 3,215,111,975
	Amount proposed for rescission..... \$ 1,093,500,000
OMB identification code: 17-1506-0-1-051	Legal authority (in addition to sec. 1012): <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year Sept. 30, 1992 Sept. 30, 1991 (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other

JUSTIFICATION: This appropriation provides for the procurement, modification, and modernization of aircraft, equipment, spare parts, and specialized equipment. The rescission includes \$200 million appropriated for the V-22 aircraft in 1989, and is consistent with the GAO conclusion (Report #91-65) that the V-22 is not sufficiently developed to enter production. \$893.5 million is proposed for rescission due to the termination of the A-12 program. Due to cost overruns and significant schedule delays the A-12 program was terminated for default. The Navy will pursue development of a medium aircraft alternative to the A-6/A-12 under the AX (Aircraft Experimental) program.

ESTIMATED PROGRAM EFFECT: The Navy's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
6,082,673	5,935,050	-147,623	-351,014	-346,640	-144,342	-50,301	-44,833

R91-5

Department of Defense - Military

Procurement

Weapons procurement, Navy

Of the funds made available under this head in Public Law 100-463, \$2,600,000 are rescinded.

Rescission Proposal No. R91-5

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority.....
BUREAU: Procurement	Other budgetary resources... \$ 395,446,259
Appropriation title and symbol: Weapons procurement, Navy 179/11507	Total budgetary resources... 395,446,259
	Amount proposed for rescission..... \$ 2,600,000
OMB Identification code: 17-1507-0-1-051	Legal authority (in addition to sec. 1012):
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Antideficiency Act
	<input type="checkbox"/> Other
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year <u>Sept. 30, 1991</u> (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other

JUSTIFICATION: This appropriation provides for the procurement, modification and modernization of missiles and weapons, equipment, including ordnance, spare parts, and specialized equipment. The funds proposed for rescission are for the Sparrow Missile program which was terminated with the FY 1989 procurement when the inventory objective was achieved.

ESTIMATED PROGRAM EFFECT: The Navy's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
2,312,386	2,312,134	-252	-853	-993	-260	-117	-91

R91-6

Department of Defense - Military
Procurement

Shipbuilding and conversion, Navy

Of the funds made available under this head in Public Law 101-
511, \$405,000,000 are rescinded.

Rescission Proposal No. R91-6

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... \$ 10,148,871,000 (P.L. 101-511)
BUREAU: Procurement	Other budgetary resources... _____
Appropriation title and symbol: Shipbuilding and conversion, Navy 171/51611	Total budgetary resources... \$ 10,148,871,000
	Amount proposed for rescission..... \$ 405,000,000
OMB Identification code: 17-1611-0-1-051	Legal authority (in addition to sec. 1012): <input type="checkbox"/> Antideficiency Act
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year <u>Sept. 30, 1995</u> (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: This appropriation provides for the acquisition or conversion of Navy ships and vessels including government and contractor furnished long lead components. The \$405 million being proposed for rescission was appropriated for the Service Life Extension Program for the USS Kennedy (CV-67). The FY 1992 budget includes funding in Operations and Maintenance, Navy for a complex overhaul of the USS Kennedy which eliminates the need for the Service Life Extension. Since no FY 1991 funds are required, they are available for rescission.

ESTIMATED PROGRAM EFFECT: The Navy's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
509,689	489,439	-20,250	-60,750	-76,950	-76,950	-68,850	-64,800

R91-7

Department of Defense - Military
Procurement

Other procurement, Navy

Of the funds made available under this head in Public Law 101-511, \$10,000,000 are rescinded.

Other procurement, Navy		Type of account or fund	
		<input type="checkbox"/> Army <input type="checkbox"/> Navy <input type="checkbox"/> Air Force <input type="checkbox"/> Marine Corps <input type="checkbox"/> Coast Guard <input type="checkbox"/> Other	
		<input type="checkbox"/> Direct <input type="checkbox"/> Indirect	
		<input type="checkbox"/> Major <input type="checkbox"/> Minor	
		<input type="checkbox"/> Other	

Rescission Proposal No. R91-7

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... \$ 5,620,746,000 (P.L. 101-511)
BUREAU: Procurement	Other budgetary resources... 96,000,000
Appropriation title and symbol: Other procurement, Navy 171/31810	Total budgetary resources... 5,716,746,000
	Amount proposed for rescission..... \$ 10,000,000
OMB Identification code: 17-1810-0-1-051	Legal authority (in addition to sec. 1012):
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year <u>Sept. 30, 1993</u> (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: This appropriation provides for the procurement and modernization of support equipment and materials not otherwise provided for. The accelerated SQR-18 towed array sonar system prototype funded in FY 1991 is no longer required since the program has been terminated.

ESTIMATED PROGRAM EFFECT: The Navy's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
601,721	600,631	-1,090	-2,200	-3,640	-1,730	-780	-480

Department of Defense - Military

Procurement, Marine Corps

Of the funds made available under this head in Public Law 101-511, \$2,000,000 are rescinded.

Rescission Proposal No. R91-8

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority.....
BUREAU: Procurement	Other budgetary resources... \$ 54,344,847
Appropriation title and symbol: Procurement, Marine Corps 179/11109	Total budgetary resources... 54,344,847
	Amount proposed for rescission..... \$ 2,000,000
OMB identification code: 17-1109-0-1-051	Legal authority (in addition to sec. 1012):
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Antideficiency Act
	<input type="checkbox"/> Other
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year <u>Sept. 30, 1991</u> (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other

JUSTIFICATION: This appropriation provides for the procurement and modification of missiles, armament, ammunition, military equipment and spare parts. The funds proposed for rescission are for ADP equipment and are excess to program requirements.

ESTIMATED PROGRAM EFFECT: The Marine Corps' ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
336,137	335,823	-314	-486	-530	-430	-150	-80

Rescission Proposal No. R91-9

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority.....
BUREAU: Procurement	Other budgetary resources... \$ 2,664,539,705
Appropriation title and symbol: Aircraft procurement, Air Force 579/13010	Total budgetary resources... 2,664,539,705
	Amount proposed for rescission..... \$ 14,200,000
OMB identification code: 57-3010-0-1-051	Legal authority (in addition to sec. 1012):
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Antideficiency Act
	<input type="checkbox"/> Other
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year <u>Sept. 30, 1991</u> (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other

JUSTIFICATION: This appropriation provides for the procurement, modification and modernization of aircraft, equipment, including ordnance, spare parts and specialized equipment. The following funds are excess to program requirements and proposed for rescission: F-16 aircraft (\$9.2 million); MC-130H aircraft (\$1.3 million); C-17 aircraft (\$1.6 million); TR-1/U-2 aircraft (\$.1 million); spares (\$1 million); and other production charges (\$1 million).

ESTIMATED PROGRAM EFFECT: The Air Force's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
5,805,754	5,805,115	-639	-3,422	-5,268	-2,528	-1,264	-837

R91-10

Department of Defense - Military

Procurement

Missile procurement, Air Force

Of the funds made available under this head in Public Law 101-165, \$500,000 are rescinded, and of the funds made available under this head in Public Law 100-463, \$74,200,000 are rescinded.

Type of budget authority:		Type of account or fund:	
Appropriation	<input type="checkbox"/>	Appropriation	<input type="checkbox"/>
Contract authority	<input type="checkbox"/>	Contract authority	<input type="checkbox"/>
Other	<input type="checkbox"/>	Other	<input type="checkbox"/>

JUSTIFICATION: This appropriation provides for the procurement, modification and maintenance of missiles and related equipment. The Department of Defense is authorized to acquire and maintain such equipment as may be necessary for the national defense. The Department of Defense is authorized to acquire and maintain such equipment as may be necessary for the national defense. The Department of Defense is authorized to acquire and maintain such equipment as may be necessary for the national defense.

ESTIMATED FISCAL YEAR 1991: The Department of Defense estimates that the total cost of this program for fiscal year 1991 is \$1,000,000. The Department of Defense estimates that the total cost of this program for fiscal year 1991 is \$1,000,000.

OUTLAY EFFECT: In hundreds of dollars: The Department of Defense estimates that the total outlay for this program for fiscal year 1991 is \$1,000,000. The Department of Defense estimates that the total outlay for this program for fiscal year 1991 is \$1,000,000.

QUESTIONS: For information only. The Department of Defense estimates that the total cost of this program for fiscal year 1991 is \$1,000,000. The Department of Defense estimates that the total cost of this program for fiscal year 1991 is \$1,000,000.

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Rescission Proposal No. R91-10

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... _____
BUREAU: Procurement	Other budgetary resources... \$ <u>1,821,772,469</u>
Appropriation title and symbol: Missile procurement, Air Force 570/23020 579/13020	Total budgetary resources... \$ <u>1,821,772,469</u>
	Amount proposed for rescission..... \$ <u>74,700,000</u>
OMB identification code: 17-3020-0-1-051	Legal authority (in addition to sec. 1012):
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Antideficiency Act
	<input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year <u>Sept. 30, 1992</u> (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: This appropriation provides for the procurement, modification and modernization of missiles, spacecraft, rockets and related equipment including spare parts, ground handling equipment and training devices. Of the \$74.7 million proposed for rescission, \$58 million (FY 1989) results from termination of the Tacit Rainbow program. The following proposed rescissions are excess to program requirements: Maverick missile (FY 1989, \$2 million; FY 1990, \$.5 million); Missile Replacement Equipment (\$2.2 million), Ground Launched Cruise Missile (\$.6 million); Minuteman modifications (\$1.2 million); Air Launched Cruise Missile (\$5.5 million); spares (\$2.6 million); Global Positioning System (\$.2 million); and Defense support program (\$1.9 million).

ESTIMATED PROGRAM EFFECT: The Air Force's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
3,223,508	3,219,026	-4,482	-16,434	-24,651	-21,290	-6,648	-2,988

R91-11

Department of Defense - Military

Procurement

Other procurement, Air Force

Of the funds made available under this head in Public Law 101-511, \$18,500,000 are rescinded, and of the funds made available under this head in Public Law 101-165, \$113,400,000 are rescinded, and of the funds made available under this head in Public Law 100-463, \$122,300,000 are rescinded.

Appropriation	<input checked="" type="checkbox"/>	1991-00-1991	<input type="checkbox"/>
Continuation	<input type="checkbox"/>	1991-00-1991	<input checked="" type="checkbox"/>
Other	<input type="checkbox"/>	1991-00-1991	<input type="checkbox"/>

Rescission Proposal No. R91-11

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... \$ 7,543,818,000 (P.L. 101-511)
BUREAU: Procurement	Other budgetary resources... 2,289,181,344
Appropriation title and symbol: Other procurement, Air Force 571/33080 570/23080 579/13080	Total budgetary resources... 9,832,999,344
OMB Identification code: 57-3080-0-1-051	Amount proposed for rescission..... \$ 254,200,000
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Legal authority (in addition to sec. 1012): <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual Sept. 30, 1991 <input type="checkbox"/> Annual Sept. 30, 1992 <input checked="" type="checkbox"/> Multi-year <u>Sept. 30, 1993</u> (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: This appropriation provides for the procurement and modification of equipment supplies, materials and spare parts. The Over-The-Horizon-Backscatter Radar program has been terminated due to high costs and limited capability compared to other means of surveillance and due to the diminished threat. The East and West Coast sectors will be placed in storage and the previously planned Alaska sectors will not be built.

ESTIMATED PROGRAM EFFECT: The Air Force's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
7,064,090	7,020,876	-43,214	-58,974	-69,397	-47,027	-19,319	-14,743

R91-12

Department of Defense - Military

Procurement

Procurement, Defense Agencies

Of the funds made available under this head in Public Law 101-511, \$60,000,000 are rescinded, and of the funds made available under this head in Public Law 101-165, \$5,303,000 are rescinded.

Rescission Proposal No. R91-12

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... \$ 2,501,514,000 (P.L. 101-511)
BUREAU: Procurement	Other budgetary resources... 642,139,300
Appropriation title and symbol: Procurement, Defense Agencies 971/30300 970/20300	Total budgetary resources... 3,143,653,300
	Amount proposed for rescission..... \$65,303,000
OMB identification code: 97-0300-0-1-051	Legal authority (in addition to sec. 1012):
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year Sept. 30, 1992 Sept. 30, 1993 (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: This appropriation provides for expenses of activities and agencies of DoD necessary for procurement, and modification of equipment, supplies, materials and spare parts. \$60 million of these funds, appropriated for the Joint Wargaming Simulation program, are excess to requirements because wargaming requirements are being funded by the Army, Navy and Air Force. \$5.3 million of FY 1990 funds for a classified program are excess to program requirements.

ESTIMATED PROGRAM EFFECT: The DoD's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
1,472,728	1,449,215	-23,508	-29,385	-10,775	-784	-522	-329

R91-13

Department of Defense - Military

Procurement

National guard and reserve equipment

Of the funds made available under this head in Public Law 101-511, \$281,900,000 are rescinded, and of the funds made available under this head in Public Law 100-463, \$8,000,000 are rescinded.

Rescission Proposal No. R91-13

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... \$ 2,501,700,000 (P.L. 101-511)
BUREAU: Procurement	Other budgetary resources... 249,764,936
Appropriation title and symbol: National guard and reserve equipment 971/30350 970/20350	Total budgetary resources... 2,751,464,936 Amount proposed for rescission..... \$289,900,000
OMB identification code: 97-0350-0-1-051	Legal authority (in addition to sec. 1012): <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year Sept. 30, 1991 Sept. 30, 1993 (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: This appropriation provides for the procurement of aircraft, missiles, tracked combat vehicles, ammunition, other weapons and other procurement for the reserve components of the armed forces. The \$8.0 million of FY 1989 funds proposed for rescission are excess to current requirements for procurement of Small Unit Support Vehicles. The \$281.9 million of FY 1991 funds proposed for rescission are for the procurement of Navy Reserve MH-53 helicopters which are no longer needed due to force structure reductions.

ESTIMATED PROGRAM EFFECT: The National Guard and Reserve's ability to successfully accomplish their missions would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
372,563	358,068	-14,495	-89,869	-89,869	-44,935	-20,293	-27,540

Rescission Proposal No. R91-14

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... \$ 5,602,671,000 (P.L. 101-511)
BUREAU: Research, Development, Test, and Evaluation	Other budgetary resources... _____
Appropriation title and symbol: Research, development, test, and evaluation, Army 211/2 2040	Total budgetary resources... \$5,602,671,000
OMB Identification code: 21-2040-0-1-051	Amount proposed for rescission..... \$60,800,000
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Legal authority (in addition to sec. 1012): <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year <u>Sept. 30, 1991</u> (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: This appropriation provides for basic and applied scientific research, development test, and evaluation, including maintenance, rehabilitation, lease and operation of facilities and equipment. The following amounts proposed for rescission result from program terminations, or are excess to program requirements: Multi-Purpose Individual Munition (\$13 million); FOG-M (\$40 million); Land Mine Warfare (\$2.4 million); Smoke and Obscurants (\$3.7 million); Nuclear Munition - ED (\$1.5 million); and Nuclear Munition - AD (\$.2 million).

ESTIMATED PROGRAM EFFECT: The Department of the Army's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

<u>1991 Outlay Estimate</u>		<u>Outlay Changes</u>					
<u>Without</u>	<u>With</u>						
<u>Rescission</u>	<u>Rescission</u>	<u>FY 1991</u>	<u>FY 1992</u>	<u>FY 1993</u>	<u>FY 1994</u>	<u>FY 1995</u>	<u>FY 1996</u>
2,989,600	2,956,160	-33,440	-20,672	-4,438	-1,094	-912	-244

R91-15

Department of Defense - Military

Research, Development, Test, and Evaluation

Research, development, test, and evaluation, Navy

Of the funds made available under this head in Public Law 101-511, \$103,300,000 are rescinded, and of the funds made available under this head in Public Law 101-165, \$731,200,000 are rescinded.

Authority Act <input type="checkbox"/> Other <input type="checkbox"/>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Appropriation <input type="checkbox"/> Contract Authority <input type="checkbox"/> Other <input type="checkbox"/>	Annual <input type="checkbox"/> Multi-Year <input checked="" type="checkbox"/> No Year <input type="checkbox"/>

Rescission Proposal No. R91-15

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... \$ 9,021,353,000 (P.L. 101-511)
BUREAU: Research, Development, Test, and Evaluation	Other budgetary resources... 1,198,518,821
Appropriation title and symbol: Research, development, test, and evaluation, Navy 171/21319 170/11319	Total budgetary resources... 10,219,871,821
OMB identification code: 17-1319-0-1-051	Amount proposed for rescission..... \$ 834,500,000
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Legal authority (in addition to sec. 1012): <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year Sept. 30, 1991 Sept. 30, 1992 (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: This appropriation provides for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease and operation of facilities and equipment. The following amounts proposed for rescission result from program terminations, or are excess to program requirements: A-12 aircraft (FY 1990, \$722.2 million); CATFAE Antimine System (\$5.5 million); Sea Lance (\$71 million); Fleet Electronic Warfare Support Group Competition (\$15 million); Surface Ship Torpedo Defense (FY 1990, \$9 million); Remote Control of Mines (\$1.3 million); Electro/Optical Sensor (\$1 million); Directed Energy, countermeasures (\$4.6 million); Aircraft Equipment Reliability/Maintainability Program (\$1.4 million); Marine Corps Ground Combat (\$1.5 million); and Contract Design (\$2 million).

ESTIMATED PROGRAM EFFECT: The Navy's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
8,258,504	7,791,184	-467,320	-269,544	-65,090	-11,683	-13,352	-7,511

Rescission Proposal No. R91-16

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... \$ 11,947,015,000
BUREAU: Research, Development, Test, and Evaluation	Other budgetary resources.. 3,399,662,809
Appropriation title and symbol: Research, development, test and evaluation, Air Force 571/23600 570/13600	Total budgetary resources... 15,346,677,809
OMB identification code: 57-3600-0-1-051	Amount proposed for rescission..... \$ 134,100,000
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Legal authority (in addition to sec. 1012): <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year Sept. 30, 1991 Sept. 30, 1992 (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: This appropriation provides for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease and operation of facilities and equipment. The following amounts proposed for rescission are due to schedule delays, program limitations or are excess to program requirements: Short Range Attack Missile (\$77.4 million); Medium Launch Vehicle (\$20 million); Tacit Rainbow (\$27 million), In-House Lab Independent Research (FY 1990, \$.1 million), Defense Research Sciences (FY 1990, \$3.8 million), and Range Improvements (FY 1990, \$5.8 million).

ESTIMATED PROGRAM EFFECT: The Department of the Air Force's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
10,094,621	10,616,843	-77,778	-38,889	-12,069	-2,816	-2,280	-268

R91-17

Department of Defense - Military

Research, Development, Test, and Evaluation

Research, development, test, and evaluation, Defense Agencies

Of the funds made available under this head in Public Law 101-511, \$20,000,000 are rescinded, and of the funds made available under this head in Public Law 101-511, \$9,300,000 are rescinded.

Rescission Proposal No. R91-17

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... \$ 9,114,541,000 (P.L. 101-511)
BUREAU: Research, Development, Test, and Evaluation	Other budgetary resources.. 785,893,364
Appropriation title and symbol: Research, development, test, and evaluation, Defense Agencies 971/20400 970/10400	Total budgetary resources... 9,900,434,364
OMB identification code: 97-0400-0-1-051	Amount proposed for rescission..... \$ 29,300,000
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Legal authority (in addition to sec. 1012): <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year Sept. 30, 1991 Sept. 30, 1992 (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: This appropriation provides for basic and applied scientific research, development, test, and evaluation, including maintenance, rehabilitation, lease and operation of facilities and equipment. The following amounts proposed for rescission are due to schedule delays or are excess to program requirements: Wargaming Simulation (\$15 million); Long Range Conventional Standoff Weapon (\$5 million), Research Projects (FY 1990, \$8 million), and Defense Support Program Office (FY 1990, \$1.3 million).

ESTIMATED PROGRAM EFFECT: The DoD's ability to successfully accomplish its mission would not be affected by this rescission proposal.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
7,793,467	7,778,231	-15,236	-11,281	-2,022	-557	-204	---

R91-18

Department of Defense - Military

Military Construction

Military construction, Navy

Of the funds made available under this head in Public Law 101-519, \$37,990,000 are rescinded, and of the funds made available under this head in Public Law 100-447, \$10,972,000 are rescinded.

Rescission Proposal No. R91-18

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... \$ 1,132,606,000 (P.L. 101-519)
BUREAU: Military Construction	Other budgetary resources.. 117,737,337
Appropriation title and symbol: Military construction, Navy 171/51205 179/31205	Total budgetary resources... 1,250,343,337
	Amount proposed for rescission..... \$ 48,962,000
OMB identification code: 17-1205-0-1-051	Legal authority (in addition to sec. 1012): <input type="checkbox"/> Antideficiency Act
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year Sept. 30, 1993 Sept. 30, 1995 (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: This appropriation provides for acquisition, construction, installation and equipping of temporary or permanent public works, military installations, facilities and real property for the Navy. The project (\$37.99 million) that supports the TRIDENT II D-5 backfit are not required because the backfit program has been delayed beyond 1997 and construction is no longer required for an Electronic Installation site, (FY 1989, \$10.972 million) that would support a Relocatability Over-The-Horizon radar project that was terminated.

ESTIMATED PROGRAM EFFECT: No adverse effects are anticipated.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
468,568	462,555	-6,022	-24,824	-10,772	-2,448	-2,203	-1,714

R91-19

Department of Defense - Military

Military Construction

Military construction, Air Force

Of the funds made available under this head in Public Law 101-519, \$11,000,000 are rescinded, and of the funds made available under this head in Public Law 101-148, \$63,900,000 are rescinded, and of the funds made available under this head in Public Law 109-447, \$16,900,000 are rescinded.

Rescission Proposal No. R91-19

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Defense	New budget authority..... \$ 949,094,000 (P.L. 101-519)
BUREAU: Military Construction	Other budgetary resources.. 1,089,029,963
Appropriation title and symbol: Military construction, Air Force 579/33300 570/43300 571/53300	Total budgetary resources... 2,038,123,963
OMB identification code: 17-3300-0-1-051	Amount proposed for rescission..... \$ 91,800,000
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Legal authority (in addition to sec. 1012): <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual Sept. 30, 1993 Sept. 30, 1994 <input checked="" type="checkbox"/> Multi-year <u>Sept. 30, 1995</u> (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

JUSTIFICATION: This appropriation provides for acquisition, construction, installation and equipping of temporary or permanent public works, military installations, facilities and real property for the Air Force. The facilities to support Over-The-Horizon Radar program are no longer needed because the radar program was terminated (FY 1989, \$16.9 million, and FY 1991 \$11 million). Facilities to support the deployment of the PEACEKEEPER missiles in the rail garrison basing mode at F.E. Warren AFB, WY result in unneeded funds (FY 1990, \$63.9 million) because there are no plans to deploy the PEACEKEEPER in the rail garrison basing mode.

ESTIMATED PROGRAM EFFECT: No adverse effects are anticipated.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
845,592	848,432	-7,160	-39,740	-23,868	-11,016	-5,508	-3,213

R91-20

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Programs

Annual contributions for assisted housing

Of the funds made available under this head in Public Law 101-507, \$535,000,000, together with all uncommitted balances remaining in the Nehemiah Housing Opportunity revolving fund, are rescinded: Provided, That \$233,760,000 shall be inserted in lieu of \$733,760,000 for the development and acquisition cost of public housing: Provided further, That no funding shall be available for assistance under the Nehemiah housing opportunity program.

Rescission Proposal No. R91-20

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... \$ <u>9,415,000,000</u>
BUREAU: Housing Programs	(P.L. 101-507) Other budgetary resources... <u>1,345,467,988</u>
Appropriation title and symbol: Annual contributions for assisted housing 86X0164	Total budgetary resources... <u>10,760,467,988</u>
	Amount proposed for rescission.....\$ <u>500,000,000</u>
OMB identification code: 86-0164-0-1-999	Legal authority (in addition to sec. 1012):
Grant program: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other
Type of account or fund: <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year _____ (expiration date) <input checked="" type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other

JUSTIFICATION: This appropriation provides funds for various subsidized housing programs. A rescission is proposed for the development and acquisition cost of public housing to offset the additional funding proposed in 1991 for the new HOPE and HOME programs. This action is taken to fulfill the budget principles adopted in the Omnibus Budget Reconciliation Act of 1990.

ESTIMATED PROGRAM EFFECT: This action would reduce the construction of new public housing from 10,000 units at a cost of \$733,760,000 to 3,186 units at a cost of \$233,760,000. New rental construction for low-income households is, however, an eligible funding activity under HOME.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
13,641,074	13,641,074	---	-40,000	-165,000	-135,000	-160,000	---

R91-21

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Programs

Congregate services

All of the funds made available under this head in Public Law
101-507 are rescinded.

Rescission Proposal No. R91-21

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development		New budget authority..... \$	<u>9,500,000</u>
BUREAU: Housing Programs		(P.L. 101-507)	
Appropriation title and symbol: Congregate services program		Other budgetary resources...	<u>5,027,709</u>
86X0178 861/20178 860/10178		Total budgetary resources...	<u>14,527,709</u>
OMB identification code: 86-0178-0-1-604		Amount proposed for rescission.....\$	<u>9,500,000</u>
Grant program: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Legal authority (in addition to sec. 1012): <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other	
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year Sept. 30, 1991 <u>Sept. 30, 1992</u> (expiration date) <input checked="" type="checkbox"/> No-Year		Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other	

JUSTIFICATION: This appropriation funds supportive services for elderly residents of public and section 202 housing. An early evaluation of the results from the initial three to five year contracts suggested that the program did not achieve its primary goal of preventing premature institutionalization. Through the HOPE initiative, the Administration is proposing an alternative approach to this program by linking housing vouchers with supportive services. The rescission proposed in this account would help fund a supplemental appropriation to start the HOPE initiative in 1991.

ESTIMATED PROGRAM EFFECT: No new contracts would be funded for this program.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
7,900	7,900	---	-7,146	-2,354	---	---	---

R91-22

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Programs

Nehemiah housing opportunity fund

Note: The proposed appropriation language under Annual contribution for assisted housing affects this program.

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... \$ 35,000,000 (P.L. 101-507)
BUREAU: Housing Programs	Other budgetary resources... 32,581,569
Appropriation title and symbol: Nehemiah housing opportunity fund 86X4071	Total budgetary resources... 67,581,569
	Amount proposed for rescission.....\$ 39,112,000
OMB identification code: 86-4071-0-1-604	Legal authority (in addition to sec. 1012): <input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Type of account or fund: <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year _____ (expiration date) <input checked="" type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other

JUSTIFICATION: The Nehemiah Housing Opportunity Fund provides grants to non-profit organizations, who in turn, make loans to eligible families to assist in the purchase of new or substantially rehabilitated units. No separate program is being proposed for 1991; however, Nehemiah-type activities are eligible under the new HOPE and HOME programs. This proposed rescission would provide savings in order to fund HOPE and HOME programs. This program was repealed, as of the start of FY 1992, in the 1990 Cranston-Gonzalez National Affordable Housing Act.

ESTIMATED PROGRAM EFFECT: This rescission would effectively terminate the program one year early.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
10,839	10,839	---	---	-19,556	-19,556	---	---

R91-23

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development

Urban development action grants

Available funds under this head (including amounts deobligated in fiscal year 1991), except such amounts as may be necessary to comply with court orders of United States Courts which direct the Secretary of Housing and Urban Development to set aside funds for possible future approval of grants to carry out urban development action grant programs authorized in section 119 of the Housing and Community Development Act of 1974, as amended, are rescinded.

Rescission Proposal No. R91-23

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority.....
BUREAU: Community Planning and Development	Other budgetary resources...\$ <u>13,518,000</u>
Appropriation title and symbol: Urban development and action grants 868/10170	Total budgetary resources... <u>13,518,000</u>
	Amount proposed for rescission..... \$ <u>13,518,000</u>
OMB identification code: 86-0170-0-1-451	Legal authority (in addition to sec. 1012):
Grant program: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year <u>Sept. 30, 1991</u> (expiration date) <input type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other

JUSTIFICATION: This appropriation funds grants to distressed cities and urban counties to attempt to stimulate economic development activity. Congress has provided no monies for this program since 1988. This rescission proposes that the small amount of unobligated balances and expected recaptures of budget authority, which would be available only through the end of FY 1991, not be reutilized to fund new Urban Development Grant (UDAG) projects.

ESTIMATED PROGRAM EFFECT: No additional UDAG projects would be funded.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
210,000	210,000	—	-2,700	-3,380	-3,380	-4,058	—

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Rental rehabilitation grants

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

JUSTIFICATION: This appropriation funds grants for States, urban counties, and cities with populations in excess of 50,000 to help support the rehabilitation of privately owned rental housing. This proposed rescission would offset part of the cost of implementing the Congressionally-approved new HOPE and HOME programs in 1991. Rental rehabilitation is an eligible funding activity under HOME. This program was repealed in the 1990 Cranston-Gonzalez National Affordable Housing Act as of the start of 1992.

ESTIMATED PROGRAM EFFECT: This rescission would effectively terminate the program one year early.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
71,911	68,411	-3,500	-21,000	-31,500	-14,000	---	---

Rescission Proposal No. R91-25

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority..... \$ <u>13,000,000</u>
BUREAU: Community Planning and Development	(P.L. 101-507) Other budgetary resources... <u>396,607</u>
Appropriation title and symbol: Urban homesteading 86X0171	Total budgetary resources... <u>13,396,607</u>
	Amount proposed for rescission.....\$ <u>13,396,607</u>
OMB identification code: 86-0171-0-1-451	Legal authority (in addition to sec. 1012):
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Antideficiency Act <input type="checkbox"/> Other
Type of account or fund: <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year _____ (expiration date) <input checked="" type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other

JUSTIFICATION: In accordance with section 810 of the Housing and Community Development Act of 1974, as amended, the Secretary of HUD is authorized to transfer one-to-four unit HUD-owned properties, without payment, to units of local government for use in an urban homesteading program. In addition, the Act authorizes various agencies to transfer their unoccupied, single family properties for use in such programs. This rescission would offset partially the cost of implementing the new HOPE and HOME grant program in 1991. The Urban Homesteading program was repealed in the 1990 Cranston-Gonzalez National Affordable Housing Act as of the end of FY 1991.

ESTIMATED PROGRAM EFFECT: This rescission would effectively terminate the program one year early.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
13,766	369	-13,397	---	---	---	---	---

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Rehabilitation loan fund

Amounts made available for commitments for loans under this head in Public Law 101-507, other than amounts necessary for operating costs and the capitalization of delinquent interest on delinquent or defaulted loans, are rescinded.

Rescission Proposal No. R91-26

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

AGENCY: Department of Housing and Urban Development	New budget authority.....
BUREAU: Community Planning and Development	Other budgetary resources...\$ <u>166,459,477</u>
Appropriation title and symbol: Rehabilitation loan fund 86X4036	Total budgetary resources... <u>166,459,477</u>
	Amount proposed for rescission..... \$ <u>144,459,477</u>
OMB identification code: 86-4036-0-3-451	Legal authority (in addition to sec. 1012):
Grant program: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Antideficiency Act
	<input type="checkbox"/> Other
Type of account or fund: <input type="checkbox"/> Annual <input type="checkbox"/> Multi-year _____ (expiration date) <input checked="" type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other

JUSTIFICATION: This account was established under section 312 of the Housing Act of 1964 to authorize loans for the rehabilitation of residential and commercial properties. This program was repealed in the 1990 Cranston-Gonzalez National Affordable Housing Act as of the end of FY 1991. This proposed rescission would offset partially the cost of implementing the new HOPE and HOME grant programs in 1991.

ESTIMATED PROGRAM EFFECT: This rescission would effectively terminate the program one year early.

OUTLAY EFFECT: (in thousands of dollars):

1991 Outlay Estimate		Outlay Changes					
Without Rescission	With Rescission	FY 1991	FY 1992	FY 1993	FY 1994	FY 1995	FY 1996
-41,645	-55,145	-13,500	-67,500	-54,000	-9,459	---	---

Supplemental Report

This revision increases by \$830,102 the previous deferral of \$2,092,829,284 in the Economic support fund, resulting in a total deferral of \$2,093,659,386. The increase results from more unobligated funds carried over from FY 1990 than previously anticipated.

Deferral No. 91-1B

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... \$ <u>3,161,000,000</u> (P.L. 101-513)
BUREAU: International Security Assistance	Other budgetary resources..... * <u>185,609,123</u>
Appropriation title and symbol: Economic support fund <u>1/</u>	Total budgetary resources..... * <u>3,346,609,123</u>
111/21037	Amount to be deferred:
11X1037 *	Part of year..... * \$ <u>2,093,659,386</u> 2/
110/11037	Entire year.....
OMB identification code: 11-1037-0-1-152	Legal authority (in addition to sec. 1013): <input checked="" type="checkbox"/> Antideficiency Act
Grant program: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input checked="" type="checkbox"/> Multi-year: <u>September 30, 1992</u> (expiration date) <input checked="" type="checkbox"/> No-Year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund.....*	11x1037	11-1037-0-1-152	* \$ 40,219,102
Economic support fund.....	111/21037	11-1037-0-1-152	1,904,121,000
Economic support fund.....	110/11037	11-1037-0-1-152	<u>149,319,284</u>
			* 2,093,659,386

JUSTIFICATION: This action defers funds pending approval of specific loans and grants to eligible countries by the Secretary of State after review by the Agency for International Development and the Treasury Department. This interagency review process will ensure that each approved program is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1990 (D90-1C).

2/ The deferred amount has been reduced to \$1,896,006,536 due to subsequent releases.

* Revised from previous report.

Reader Aids

Federal Register

Vol. 56, No. 46

Friday, March 8, 1991

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-3447

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230
---------------------	----------

Other Services

Data base and machine readable specifications	523-3408
Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the hearing impaired	523-5229

FEDERAL REGISTER PAGES AND DATES, MARCH

8681-8904	1
8905-9120	4
9121-9268	5
9269-9580	6
9581-9834	7
9835-10140	8

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

Proposed Rules:	
305	9656

3 CFR

Administrative Orders:	
Memorandums:	
February 21, 1991	9271
Presidential Determinations:	
No. 91-20 of	
January 25, 1991	8681
Executive Orders:	
12163 (See Presidential Determination 91-20 of	
January 25, 1991)	8681
Proclamations:	
6254	9121
6255	9269
6256	95791105 CFR

Proposed Rules:	
581	9181

7 CFR

1	9581
17	9273
46	8683
301	9273
905	8684
918	8905
1046	9274
1434	9592
Proposed Rules:	
12	9258
704	9293
920	9302
1005	9306
1410	9293
1413	9251

Proposed Rules:	
12	9258
704	9293
920	9302
1005	9306
1410	9293
1413	9251

8 CFR

241	8906
242	8906
274	8685

9 CFR

82	9752
331	8907, 8908
381	8907, 8908

10 CFR

Ch. XVII	9605
710	10068
1048	9611
Proposed Rules:	
710	10075
1703	9902

11 CFR

110	9275
-----	------

12 CFR

265	8687
600	8910
601	8910
602	8910
603	8910
604	9611
606	8910
611	8910
612	8910
614	8910
615	8910
617	8910
618	8910
619	8910
621	8910
960	8688
Proposed Rules:	
327	9308

14 CFR

21	8699-8701
25	8699-8701
39	9612-9618, 9835-9838
71	9618-9620
1209	8910

Proposed Rules:	
39	8732, 8733, 8935, 9659, 9661, 9907-9913
71	9660, 9663, 9914
91	8938

15 CFR

303	9621
-----	------

16 CFR

305	9123
1500	9276
1502	9276

Proposed Rules:	
1700	9181

17 CFR

240	9124
-----	------

18 CFR

1301	9288
------	------

Proposed Rules:	
35	8938

19 CFR

Proposed Rules:	
141	9311

21 CFR

5	8709
510	9622, 9840
520	8709, 8710, 9840
522	9622
524	9622
556	8710

558..... 9622, 9841
1308..... 9132
1316..... 8685

Proposed Rules:

201..... 9312
356..... 9915
808..... 8940

22 CFR

514..... 8711

24 CFR

Ch. I..... 9472
91..... 9169
791..... 9822

Proposed Rules:

203..... 8941

26 CFR

1..... 8911
31..... 8911
301..... 9169
602..... 8912

Proposed Rules:

1..... 8943-8967
301..... 9182

27 CFR

5..... 8922

Proposed Rules:

16..... 10066

28 CFR

0..... 8923
8..... 8685

Proposed Rules:

11..... 8734

29 CFR

541..... 9252
579..... 9252
580..... 9252
801..... 9046
1601..... 9623

Proposed Rules:

516..... 9183
778..... 9183
1602..... 9185

30 CFR

56..... 9626
57..... 9626
243..... 9251
723..... 10060
845..... 10060

Proposed Rules:

901..... 8967
913..... 8969
935..... 9312

32 CFR

291..... 9841
627..... 9424

Proposed Rules:

299a..... 9314

33 CFR

3..... 9288
100..... 9850, 9851
110..... 9852
117..... 8712
151..... 8878
165..... 9289

Proposed Rules:

117..... 9916

36 CFR**Proposed Rules:**

9..... 9917

38 CFR

6..... 9626
8..... 9626
21..... 9627
36..... 9853

39 CFR**Proposed Rules:**

111..... 9664

40 CFR**Proposed Rules:**

Ch. I..... 8972, 9315
52..... 9172-9175
60..... 9177
82..... 9518
86..... 9754
147..... 9408
228..... 9178
86..... 8856
123..... 8973
300..... 9187
600..... 8856
799..... 9092, 9105

41 CFR

105-8..... 9862
301-1..... 9878
302-11..... 9289
Ch. 304..... 9878

42 CFR

400..... 8832
405..... 8832
406..... 8832
412..... 9633

44 CFR

353..... 9452

45 CFR

74..... 8712
205..... 8924
232..... 8926
234..... 8926
235..... 8926
801..... 9180
1611..... 9634

46 CFR

25..... 8878

47 CFR

0..... 9752
2..... 9881
21..... 9897
69..... 9897
73..... 8933, 8934, 9898, 9899
80..... 9881
94..... 9897, 9900

Proposed Rules:

73..... 8974-8976, 9189-9191,
9924
76..... 9924

48 CFR**Proposed Rules:**

Ch. 2, App. N..... 9082
22..... 9832
42..... 9832
52..... 9832

202..... 9082
203..... 9082
204..... 9082
217..... 9082
225..... 9082
228..... 9082
232..... 9082
245..... 9082
252..... 9082
1803..... 8718
1804..... 8718
1805..... 8718
1806..... 8718
1814..... 8718
1815..... 8718
1819..... 8718
1836..... 8718
1849..... 8718
1852..... 8718
1853..... 8718

49 CFR

1..... 9635
1010..... 9635
1011..... 8721
1330..... 8722

Proposed Rules:

Ch. X..... 9181
383..... 9925
571..... 9928
1053..... 9339

50 CFR

611..... 8722, 38723
620..... 8722
646..... 9251
672..... 9635, 9636
675..... 9636

Proposed Rules:

20..... 9462
641..... 9930
658..... 8736
672..... 9251
675..... 9251

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S.J. Res. 51/Pub. L. 102-7

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102d Congress, 1st Session, 1991

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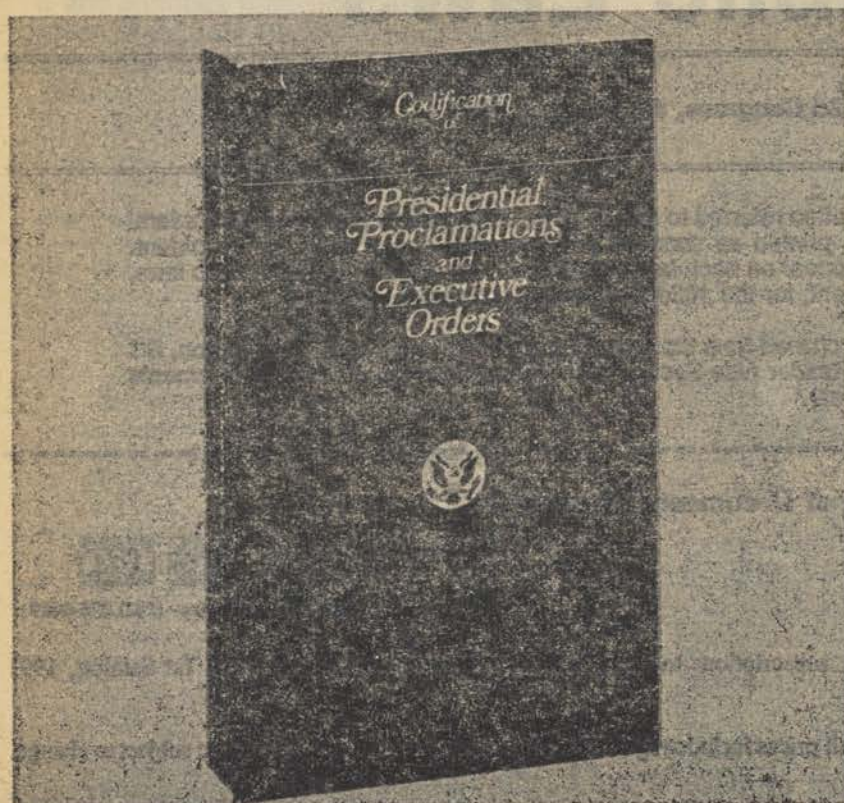
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